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RJ Policy Transfer: The Case of Jamaica

By

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in Politics and International Studies**

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Declaration

I hereby declare that the research presented in this thesis is my own work, which entails empirical knowledge derived from primary and secondary data collated through fieldwork in Jamaica from September 2014 and March 2015. All the information acquired through elite interviews and focus groups was used with the written permission of the participants. Anonymity has been maintained as and when requested. I confirm that the research presented in this thesis has not been submitted for a degree at another university.

Abstract

This thesis is a critical examination of the national Restorative Justice policy in Jamaica developed between 2001 and 2015. Restorative justice was considered as part of a larger on-going attempt of penal reform. Within this thesis, I adopted this definition from Tony Marshall thesis¹:

“RJ is the process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of an offence and its implications for the future (Marshall, 1999).

Essentially, as a process that brings all those with a stake in a particular offence to collectively resolve the aftermath of the offence and its future implications, Restorative justice aims to do three things: (i) address the victim’s needs (ii) hold the offender accountable in a way that reintegrates them into society with reduced likelihood of reoffending and (iii) empower the community by involving them in providing justice to victims. I propose that RJ is consistent with an international human rights perspective on justice. This viewpoint understands punishment as an opportunity for addressing the direct cause of offending through an individualised approach to accountability. I argue that restorative justice can be an effective penal policy. However I argue that it is most beneficial when it is community driven, whilst having the financial support and supervision of the state.

The restorative justice policy process might have been an opportunity for the Jamaican government to implement effective penal policy. However, I argue that the Jamaican government engaged in a type of inappropriate policy transfer, where there was a failure to consider the cultural, political context of the country throughout development and implementation of policy. In particular, the government, as a result of the historically skewed donor relations in Jamaica, engaged in

¹ As part of the formal justice system, RJ is typically embraced as an approach for juvenile offenders initially. While I mention that this would have been a beneficial approach for the Jamaican government to make in Chapter 6, there is limited scope to move beyond this position, since its recognised use is limited to that of adults.

opportunistic policy transfer, where they gave primacy, without coercion, to the perceived interests of international donors. This is clear from the lack of even collaboration among stakeholders. This failure to be collaborative meant the neglect of such local facts of life as the lack of resources, political corruption and public mistrust of the state, the long-standing community loyalties to ‘dons’ or local leaders of organised crime and most importantly, the presence of informal mechanisms for dispute resolution already operating within the Jamaican context that might have provided a foundation for a context-specific effective ‘Jamaicanised’ form of restorative justice.

List of Abbreviations

ADR	Alternative Dispute Resolution
ATF	U.S Bureau of Alcohol, Tobacco and Firearms
BITU	Bustamante Industrial Trade Union
CaPri	Caribbean Policy Research Institute
CARICOM	Caribbean Community and Common Market
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment
CCF	Canadian Caribbean Cooperation Fund
CCJ	Caribbean Court of Justice
CCRJC	Community Counselling RJ Centre
CDB	Caribbean Development Bank
CEDAW	Convention of the Elimination of Discrimination Against Women
CIDA	Canadian International Development Agency
CISOCA	Centre for Investigation of Sexual Offences and Child Abuse
CMS	Court Management Services
COMET	Community Empowerment Transformation
CSI	Community Security Initiative
CSO	Civil Society Organisations
CSJP	Citizen Security and Justice Programme DEA Drug Enforcement Agency
DCS	Department of Correctional Services DFID Department for International Development
DFATD	Department of Foreign Affairs, Trade and Development
DPP	Deputy Public Prosecutions
DRF	Dispute Resolution Foundation
DV	Domestic Violence
EC	European Commission

ECLAC	Economic Commission for Latin America and the Caribbean
ECOSOC	Economic and Social Council EMU Eastern Mennonite University
ESSJ	Economic and Social Survey of Jamaica
EU	European Union
FCO	Foreign Commonwealth Office
FES	Freidrich Ebert Stiftung
GOJ	Government of Jamaica
G2K	Generation 2000
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome
HEART	The Human Employment and Resource Training Trust
HR	Human Rights
IDB	Inter-American Development Bank ICCPR International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
IFI	International Financial Institution
INDECOM	Independent Commission of Investigations
IIRP	International Institute of Restorative Practices
IJCHR	Independent Jamaican Council for Human Rights
IMF	International Monetary Fund
IRA	Irish Republic Army
JBA	Jamaica Bar Association
JB I	Jamaica Bauxite Institute
JCF	Jamaica Constabulary Force
JDF	Jamaica Defense Force
JFJ	Jamaicans for Justice
JFAT	Jamaica Fugitive Apprehension Team
JJSRTF	Jamaica Justice System Reform Task Force
JLP	Jamaica Labour Party
JNCVS	Jamaica National Crime Victimization Survey

JP	Justice of the Peace
JTI	Justice Training Institute
JRIU	Justice Reform Implementation Unit
JURIST	Judicial Reform and Institutional Strengthening Project
JUST	Justice Undertaking for Social Transformation
JYAN	Jamaican Youth Advocate Network
KLAC	Kingston Legal aid Clinic
KGN	Kingston
KMA	Kingston Metropolitan Area
KMR	Kingston Metropolitan Region
KSAC	Kingston and St. Andrew Council
MNS	Ministry of National Security
MOCACA	Major Organised Crime and Anti- Corruption Agency
MOJ	Ministry of Justice
MOU	Memorandum of Understanding
MP	Minister of Parliament
OCR	Office of Children's Registry
NCU	Northern Caribbean University
NGO	Non-Governmental Organisation
NMLS	Norman Manley Law School
NPM	New Public Management
NTA	National Technical Advisor
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
PAHO	Pan American Health Organization
PMI	Peace Management Initiative

PNP	People's National Party
PR	Public Relations
PS	Permanent Secretary
RCT	Randomized Controlled Trials
RISE	Reintegrative Shaming Experiments
RJ	Restorative Justice
RJU	Restorative Justice Unit
ROTA	Race on the Agenda
SAPS	Structural Adjustment Programmes
SES	Socio-Economic Status
SOA	Sexual Offences Act
SOCA	Suppression of Criminal Organisations Act
STD	Sexually Transmitted Disease
TRC	Truth and Reconciliation Commission
TUC	Trade Union Congress
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Emergency Fund
UNODC	United Nations Office of Drugs & Crime
UK	United Kingdom
U.S.	United States of America
USAID	United States Agency for International Development
VIP	Very Important Persons
VOM	Victim-Offender Mediation
WB	World Bank
WMW	Women's Media Watch
WTO	World Trade Order

Introduction

This thesis is a critical examination of the policymaking process of the national restorative justice (RJ) policy in Jamaica between 2001 and 2015, a policy that was created as part of a larger on-going penal reform process of the Jamaican justice system.

In common with many other former British colonies, Jamaica has experienced high levels of violent crime (Lange & Dawson, 2009). This violence is often associated with a history of political patronage of criminal gangs, who use violence and exploitation of Jamaican citizens for political ends (Stone, 1976; Harriott, 1999; Charles, 2002; Charles & Beckford, 2012; Sives, 2012; Jaffe, 2015). Past efforts to reduce violent crime have had limited success for a number of reasons (Headley, 2002; Harriott, 2009; Charles & Beckford, 2012). For example, there is a history of politicians depending on criminal gangs in inner-city communities to deliver votes: a crackdown on crime would in effect be a crackdown on any ruling party's political partners or limit the potential for the opposing political party to become the dominant party. This dependence of politicians on criminals has weakened the legitimacy of the state.

This has led to a diminished capacity of the state to enforce the rule of law²². In order to avoid accountability for their direct role in criminal activity, the state avoids punishing crimes committed by political gangs and does not apply the law evenly. In turn, many Jamaicans, particularly those in the inner cities, are less inclined to depend on relevant institutions of the state, namely the justice system and law enforcement. The collusion between political officials and criminals and the correlative failure of the state to uphold the rule of law has prompted the creation of informal governance actors who take on these state responsibilities for many Jamaicans. Informal

²² Within this thesis, the rule of law refers to the idea that citizens and government are bound by law. It assumes the existence of legal rules and citizens' awareness of the requirements that those rules impose (Tamanaha, 2011).

actors are often accepted and even defended vociferously because of a lack of alternatives (Harriott, 2000; 2009, Headley, 2002; Acosta, 2005).

Historically, there have been few attempts to implement justice reform policy, due to the lack of political will to address crimes that benefit political parties. There has been a consistent failure of the Jamaican government to develop and implement even formal policy (Edie, 1984; Acosta, 2005; Harriott, 2009). Efforts at reform have focused on crimes, such as drug-trafficking and gang crime that affect developed states, in particular the USA, United Kingdom and Canada (Sives, 2007; 2012, Leslie, 2010; Figueroa & Sives, 2012; Levy, 2012). However these efforts have been half-hearted as political officials benefit directly from the crimes that donor countries seek to curb. The collusion between politicians and criminals, the country's lack of financial independence and the subsequent failure to address crime in a way that benefits local victims has resulted in victims having limited access to justice and, in some cases being at risk of further victimization by other Jamaicans and the state itself.

In this thesis I propose that this historical dependence on funders and the resulting pressure to implement certain policies have created a political culture that consistently implements policies consistent with an international agenda, regardless of funding requirements or its benefit to the Jamaican context or the . Increasingly, the Jamaican government engages in what I will refer to as *opportunistic policy transfer*, where governments adopt policies because they see it as an occasion to engender or maintain funding relationships with donors. While there is a historic trend of semi-coercive policy transfer in Jamaica, recent justice reform efforts demonstrate opportunistic policy transfer; where the government voluntarily adopts policy in order to gain financial donor support and give the appearance of being responsive to crime to the public from whom they seek electoral support. This is consistent with the limited political will to genuinely respond to the prevalence of crime seen. The superficial nature of justice policymaking in Jamaica is highlighted by a

willingness to adopt policy from other jurisdictions entirely un-adapted to the political, social and economic context of Jamaica.

The adoption of RJ policy in Jamaica is an example of opportunistic policy transfer. I propose that restorative practices, which are grounded in ideals such as accountability, collaboration and transparency, might have benefited Jamaica. A different kind of RJ has the potential to improve the public perception of the state and the justice system by strengthening its capacity to address crimes in Jamaica that are not related to political patronage. Unlike other programmes, which carry a certain level of uncertainty in terms of their capacity to reduce crime, RJ has demonstrated success in a range of other countries, including ones with similar historical background to Jamaica. This suggests a greater potential for addressing crime in Jamaica. Moreover, in Jamaica, there is a long-standing history of successfully using restorative-oriented practices as well as indigenous informal justice systems that reduce crime by embracing a community-driven approach to justice.

The stated Jamaican government rationale for developing a RJ policy was to re-establish Jamaicans' faith in the state by improving the efficiency of the justice system, reducing the costs of crime and empowering communities through a structured collaboration with the state (Ministry of Justice, 2012). In addition, the choice to develop a national policy on RJ, a form of justice apparently inconsistent with a more established retributive approach in Jamaica, appeared to indicate policy innovation.

However, my research indicates that in spite of avowed positive intentions and support for RJ from both the main political parties in Jamaica, the policy was not home-grown or motivated by a local justice deficit suffered by ordinary Jamaicans. Instead, the motivation to adopt RJ policy from Nova Scotia is actually based on the Jamaican government's pre-existing funding relationships with Canada as a donor country. What is more, the RJ policy was imported wholesale from Nova

Scotia. That is, the Jamaican government chose to copy a penal policy from a developed jurisdiction with traditions quite different from Jamaica's, a policy they hoped Jamaicans would support as a watershed change in justice policy. My research indicates that both political parties sought to claim ownership of RJ policy, whilst forgoing opportunities to fuse RJ with well-established, indigenous community-driven approaches to justice.

In other words, the national RJ policy stands as an example of *inappropriate transfer* of RJ policy, as it failed to take account of the political, social and economic differences between the donor jurisdiction of Canada and Jamaica, such as the lack of resources, the prevailing culture of informerphobia³ and public mistrust of the state. The inappropriateness of the policy transfer, which stemmed in large part from its opportunistic character, diminished the potential of RJ to reduce non-political crime, is evidenced by the difficulties with the implementation of the policy and limited willingness of the public to engage with the programme.

In this thesis I argue that the lack of collaborative governance in Jamaica contributed significantly to inappropriate policy transfer. Had the Jamaican government considered local context, where we see competition between political parties, a lack of political will to effect change (due to the cultivation of organised criminals as funders and enforcers of justice), a politicised civil society and public mistrust of the government, a more contextualised RJ programme might have been created. Instead, the Jamaican government created divides between stakeholders in the policymaking process; namely the government and civil society. This unwillingness to collaborate resulted in a fight among political parties for ownership of the policy, a disjointed approach to developing and implementing RJ in Jamaica and an overall neglect of local ingredients of penal

² This term refers to the culturally embedded fear of and consequences attached to being seen as an 'informer' by going against the community and reporting information to the police or other state officials (Henry-Lee, 2005; Jaffe, 2012).

policy reform. I suggest that all of these factors help to explain the limited uptake of the RJ programme: only 46 cases have been completed since 2014. I argue that if the Jamaican government had taken a collaborative approach to governance that incorporated a range of stakeholders, the programme would have benefitted from a single, unified approach to policymaking that would have taken in to account the context- specific issues noted above.

In the next two sections, I introduce both RJ and policy transfer, as underpinning ideas of the thesis, before going on to identify the research questions and detail how answering these questions makes a contribution to Caribbean studies, political science and criminal justice. I will then provide an outline of the rest of the thesis.

What is RJ?

RJ is practiced in a number of jurisdictions for various purposes ranging from conflict resolution in schools to transition out of foster care to rehabilitation and reintegration of offenders, to reconciliation of system-wide offences during a post-civil war/ political conflict⁴(Braithwaite, 2002; Daly, 2015; Van Ness & Strong, 2014). However, there is no single accepted definition of RJ, or a unique theory from which it has arisen (Van Ness & Strong, 2014; Daly 2015).

⁴ For instance, there is a wealth of literature on the use truth and reconciliation commissions (TRCs) in countries such as South Africa Guatemala, Canada and Chile to address gross human rights violations of the country's past (Llewellyn & Howse, 1999; Van Ness & Strong, 2014; Richards & Wilson, 2017). However, Daly (2015) notes that this is 'transitional justice', not RJ. First, TRCs are truth-seeking mechanisms, which investigate and document these abuses. A TRC is a state empowered system that investigates past events that have affected the wider population over a period of time (Richards & Wilson, 2017). TRCs document these violations in the form of a final report, which very rarely requires enforcement of recommendations or restitution for victims. As Daly (2015) points out, justice and reparations are separate ideals within TRCs. Unlike transitional justice, RJ in the criminal justice system starts off from with an acknowledgement of the convict's guilt and seeks to produce some form of personal reconciliation between the convict and victim based on the willingness of the offender to acknowledge guilt.

One of the most influential definitions, and the one adopted in this thesis⁵ is from Tony

Marshall:

“RJ is the process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of an offence and its implications for the future (Marshall, 1999).

Despite the fact that RJ is an old concept⁶, governmental interest in this approach to justice has re-emerged within the last few decades. This resurgence is motivated by the consistent failures of formal justice systems to ensure access to justice and equality before the law (Achilles & Zehr, 2000; Morris, 2002; Wenzel et al. 2008; Van Wormer, 2009). The literature on RJ suggests that westernized justice systems view crime as a violation of state laws and citizen obligations to the state (Achilles & Zehr, 2000; Wenzel et al, 2008; Barton, 2000). In doing so, many justice systems limit the role of victims and neglects the impact that crime has on wider community. In addition, the formal system provides a pre-determined response to the question of how to address crime, namely, hard treatment in the form of incarceration, or some other burden imposed upon the wrongdoer that is meant to be proportionate to what he deserves (Barton, 2000; Sullivan & Tifft, 2008; Wallace, Wylie and Gordon, 2013). However, the idea of using isolation or some harm in order to address harm caused is counter-intuitive, as it provides little benefit to the victim, wrongdoer or community. Within many post-colonial developing countries that have failing justice

⁵ As part of the formal justice system, RJ is typically embraced as an approach for juvenile offenders initially. While I mention that this would have been a beneficial approach for the Jamaican government to make in Chapter 6, there is limited scope to move beyond this position, since its recognised use is limited to that of adults.

⁶ RJ is not new (Carey, 2000; Van Ness, 2005). Practices of restitution and reconciliation after offences can be found throughout history in both Western and Non-Western traditions and religions (Umbreit, 1994; Weitekemp, 1999; Winfree, 2004). Principles of restitution for property offences can be found in the Code of Hammurabi, dating back to 1700 BC (Azdorf-Schubbe, 2000; Richards, 2009). Similar principles can be found in Old Testament and Hebrew scriptures (Carey, 2000). Some argue that RJ is anticipated in the tradition of Native Americans, New Zealand natives, as well as Mennonites in Canada and Indiana (Winfree, 2004; Wormer, 2008).

systems, this means the neglect of victims, and limited or passive punishment of offenders via incarceration that does not require them to face the effects of these crimes (Achilles & Zehr, 2015; Wallace, Wylie & Gordon, 2013). Ultimately the state fails to protect by the community because victims do not walk away with a sense of justice being achieved⁷ and it does not hold the offender accountable in a way that lessens the likelihood of reoffending upon his return to society. Thus there is a failure to protect the community effectively, beyond that of the temporary physical removal of the wrongdoer.

As in the formal justice system, RJ requires that when an offence is committed, something should be done about it (Llewellyn & Howse, 1997; Zehr, 1990; Gavrieldies, 2007). However, RJ states that crime is not simply a violation of state law (Ashworth, 2002; Braithwaite, 2002; Liebmann, 2007; Hamlin & Hokamura, 2012). Proponents of RJ argue that crime violates the relationship between the wrongdoer, the victim and the immediate community (Morris, 2002; Sullivan & Tifft, 2008; Wenzel et al, 2008; Wallace, Wylie & Gordon, 2013). In order to repair the damage, blanket punishment is not sufficient. As a violation that has affected all three parties, the response should demonstrate respect for all involved and raise awareness in the wrongdoer of the harm done in order to restore the relationships (Zehr, 1990; Llewellyn & Howse, 1997; Gavrieldies, 2007). In restoring these relationships, RJ aims to ensure that no one's dignity is violated further. This is achieved by restoring the victim's sense of security and respect via some sort of apology or compensation from the wrongdoer, increased participation in the justice process and support from

⁷ This literature indicates that lengthy periods of incarceration are not effective tools in reducing recidivism (Rydberg & Clark, 2016; Wermink, Nieuwebeerta, & Ramakers, 2017). This failure to engender reform is compounded by the poor treatment of offenders, which as will be discussed later on, increases the likelihood of recidivism. Although there is limited research on the effect of incarceration and prison conditions in Jamaica, one might infer its ineffectiveness in reforming prisoners from the consistently high reoffending rates. The DCS reported consistently high reoffending rates across prisoners during the 1990s, ranging from 25% to 48% (Taylor, Chauhan & Fondacaro, 2012). In particular, in 1993 there was a spike of 54% in offender recidivism (Taylor, Chauhan & Fondacaro, 2012).

the community. In addition, the wrongdoer is held accountable for his offending behaviour. RJ has the wrongdoer demonstrate accountability by apologising directly to his victim and community and making efforts to address the damage caused by the crime. RJ ensures that offenders are confronted with the negative effects of their actions and work actively to repair the damage. For restoratists, impersonal retribution via incarceration allows the wrongdoer merely to suffer harsh treatment without facing up to what he has done or its effects on victims. It therefore allows the wrongdoer to avoid discharging the duty to manage, learn and grow from their conflicts (Wenzel et al. 2008)⁸. By contrast, restorative practices provide the wrongdoer with the opportunities to take responsibility by facing those who have been affected by the offence directly (Hudson, 2002). Finally, increased participation from the community is an important step in increasing the commitment of the community to crime prevention and reconciling the harm directly caused by the offence.

RJ does not seek to restore the status quo, which may have contributed to committing the offence to begin with. Instead, it encourages (but is not mandated to ensure) a transformation of the offender into a better person who is capable of forming better relationships within his community. In RJ, a wrongdoer is expected to recognise his wrongdoing, repent publicly and undertake agreed actions to compensate the victim and wider community (Wenzel et al, 2008). The punishment, which is agreed to by the wrongdoer as well as the victim and community, is tailored to encourage his return to society as a law-abiding citizen; offenders are required to engage in a number of activities that respond to individualised risks for re-offending (specific to the wrongdoer), such as regular drug and alcohol testing and rehabilitative courses (Wormer, 2008). Thus, he is punished in a way that reduces the likelihood of reoffending. In restoring relationships, RJ has the potential to reintegrate victims and perpetrators into society and can facilitate a better understanding of why

⁸ The literature suggests that severe curtailment of liberties may create a sense of bitterness towards society, which strengthens the likelihood of reoffending (Dhami, 2005; Orr, 1998). This loss of rights may alienate offenders and give them a reason to reoffend.

crimes have been committed amongst the community. In this way, all parties may become aware of how they might guard against further crimes being committed.

What is Policy Transfer?

This thesis is concerned with the importation of RJ policy from a Canadian provincial jurisdiction –Nova Scotia – to Jamaica. This is an example of policy transfer. Dolowitz & Marsh (1996; 2003) are responsible for coining the term ‘policy transfer’ and setting out the framework to examine its use (Benson & Jordan, 2011; Jones & Newburn, 2014). Policy transfer is defined as the process whereby knowledge regarding policies or political practices of one political system is used in the development of policies and practices in another political system (Dolowitz & Marsh, 2003; Patterson & Sloam, 2005; Hoyt, 2006; Marsh & Sharman, 2009).

Within the policy literature, there is a substantial discussion of the transfer of elements of policies within and across jurisdictions (Bennett, 1991; Rose 1993; Dolowitz & Marsh, 2000; James & Lodge, 2003; Jones & Newburn, 2007; Monahagn, 2015; Ogg, 2015). A number of factors have been proposed to account for policy transfer, such as the spread of information between states that are geographically close and the proliferation of national networks that share information (Stone, 2012). While the transfer of policies has been a common practice throughout history, the literature identifies globalisation⁹ as the driving force behind the recent increased spread of policies (Fruhling, Tulchin & Golding, 2003;; Jones & Schoburgh, 2004; Evans, 2009; Jones, 2013; Barrows, 2014). Globalisation has not only increased the overlap in societal issues across countries, but has allowed for increased transmission of policy ideas and concepts to address these problems.

⁹Although there is no single definition of globalisation, Cerny (1994) notes that it is a term that is used widely across disciplines. Within the realm of politics, globalisation is defined as an interaction of people and governments from different jurisdictions that is driven by economic, political and technological advancements (Drezner, 2001; Evans, 2009).

Common societal issues across jurisdictions lend themselves to the use of similar policy approaches, particularly in societies with uncertain or developing political environments (Stone, 2000; Jones, 2003; Jones & Schoburgh, 2004; Muncie, 2005; Jones & Newburn, 2007; Crawford, 2011). Technological advances such as the Internet have facilitated this increased communication between policymakers (Bissessar, 2002; Benson, 2009; Evans, 2009; Barrows, 2014).

Some have argued that the study of policy transfer is pointless. McCann & Ward (2010) propose that the entire concept of policy transfer should be abandoned altogether. However, the discussion of policy transfer can be seen across a range of disciplines, ranging from political science to public health and economics (Page, 2000; Evans, 2009; Benson & Jordan, 2012; Evans & Marsh, 2012). Practically, the study of policy transfer can only help jurisdictions to improve their policymaking efforts by identifying when policy transfer is an ideal approach, how it should be done and the factors that influence process and outcome (Stone, 1999; Evans & Marsh, 2012; Dolowitz & Marsh, 2012).

From an academic standpoint, the discussion of policy transfer makes a number of contributions to policymaking literature. It explores the factors that motivate policy change and identifies the mechanisms that drive the spread of policies (Marsh & Sharman, 2009; Evans, 2009). In addition, policy transfer advances our understanding of how decision-makers learn (Haas, 1997; Evans, 2009; Marsh & Sharman, 2009). Much of the policy transfer literature discusses how policymakers learn of policies, whether through the identification of policy entrepreneurs, experts and networks, the influence of globalisation or the increased use of study tours by states to identify a suitable policy in response to a particular problem (Haas, 1997; Stone, 1999; Evans, 2009; Marsh & Sharman, 2009; Dolowitz & Marsh, 2012). Evans (2009) points out how policy transfer contributes to the discussion of incrementalism, by providing an explanation of how outside influences inform policy learning. Toen & Landwehr's discussion of cross-national policy learning

compares the impact of the different strategies of policy learning, indicating that the way in which policymakers learn about policies has an influence on the outcome of the policymaking process (as seen in Evans, 2009). McAllister, McCrea & Lubell (2014) discuss how the agendas of members of these networks influence policymaking outcomes. In the case of climate policy in Australia, they found that the prioritization of advocacy of local government issues limited policy choices and resulted in biased use of information (McAllister, McCrea & Lubell, 2014).

This thesis identifies policymaking styles embraced in Jamaica and whether or not national RJ policy is consistent with Jamaica's policymaking history. In addition, the examination of the RJ policy will discuss how effective this consistency with or departure from the norm has been for justice policy transfer, which is under examined in the literature. The examination of the various factors that affect the process and outcome of justice policy transfer in a space where there have been limited attempts at justice reform, is important for understanding how to best implement justice policy within Jamaica.

Governance

Another criticism of policy transfer literature is that it fails to advance a specific theory of policy development (Evans, 2009; Benson & Jordan, 2012). Many academic commentators agree that policy transfer is weak as a theory of policy change. However, they propose that it is strengthened when combined with other theories, particularly within the discipline of political science. Rhodes & Mazey (1995) refer to *methodological pluralism*, where a number of complementary policy development theories are combined to develop a theory that accounts for a number of topics related to policy change, such as the role of certain agents (Shlonsky & Mildon, 2014).

One of the most complementary combinations is that of policy transfer and governance (Ewalt & Jennings, 2004; Ansell & Gash, 2007; Evans, 2009; Emerson, Nabatchi & Balogh, 2011; Evans & Marsh, 2012; Stone, 2012; Moloney, 2013; Mintrom & Luetjens, 2017). Essentially, governance theory discusses shifting patterns of how people are governed; the process of ruling (Stoker, 2002; Hill, 2004; Ewalt & Jennings, 2004). Governance refers to

“The sound exercise of political, economic, and administrative authority to manage a country’s resources for development. It involves the institutionalisation of a system through which citizens, institutions, organisations, and groups in a society articulate their interests, exercise their rights, and mediate their differences in pursuit of the collective good” (Jabes, 2004, p646).

Policy transfer acts as a lens through which the evolution of state institutions and emergence of new state actors can be brought into focus (Evans, 2009). It provides a guide for understanding how and why changes in governance occur (Stoker, 2002). The literature makes a distinction between the concept of governance and government. Government refers strictly to the rule of formal state institutions working to maintain order and enable collective action, while governance advocates the sharing of responsibility beyond the state to the private and voluntary sector and ordinary citizens to solve societal issues (Stoker, 2002; Hill, 2004; Ewalt & Jennings, 2004; Holston, 2009; O’Brien, 2012; Zurba, 2014).

Policy transfer complements governance theory because of its shared emphasis on the complex relationship between the state and international policy agendas as filtered through interactions with the state as well as non-state, transnational and international actors (Evans & Marsh, 2002; Marsh & Evans, 2012; Challies et al, 2017). In fact, practitioners often adopt modes of governance from other countries as part of their policymaking efforts, as seen in the European Union and their development of environmental policy (Challies et al, 2017). In this way, policy transfer analysis can be understood as making sense of how knowledge at one level of governance influences the development at another level (Evans, 2009; Challies et al, 2017).

There has been a widespread shift away from discussions of ‘government’ to governance (Hill, 2004; Ewalt & Jennings, 2004; O’Brien, 2012)¹⁰. Marsh & Evans (2012) identify three modes of governance: hierarchy, network and market. Hierarchy governance has an organisational structure where one entity is superior to all other organisations involved (Evans & Marsh, 2012). Market governance mechanisms employ principles of competition or game theory as a means of encouraging sustainable development (Evans & Marsh, 2012). Finally, network governance is defined as

“Coordination that is characterised by organic or informal social systems, in contrast to bureaucratic structures within firms and formal contractual relationships between them.” (Jones, Hesterly & Borgatti, 1997, p 913).

They go on to discuss how policy transfer manifests under different modes of governance. Under a hierarchical mode of governance, policy transfer is more likely to be a top-down process, which takes a rationalist approach to policymaking. Network governance is more likely to make it a negotiated or collaborative process (Huxham, 2000; Hill, 2004; Ewalt & Jennings, 2004; O’Brien, 2012; Moloney, 2013; Fung 2015). It is characterised by creation of networks of all stakeholders that have comparable consideration in decision-making (Evans & Marsh, 2012). It

Within this thesis, I focus on collaborative governance, as a form of network governance.

Collaborative governance is defined as,

“The processes and structures of public policy decision making and management that engage people constructively across the boundaries of public agencies, levels of government, and/or the public, private and civic spheres in order to carry out a public purpose that could not otherwise be accomplished” (Emerson, Nabatchi & Balogh, 2011, p2).

¹⁰The literature highlights the increased value placed on the outsourcing of former state responsibilities to voluntary sector and civil society, as well as a shift in the role of government from origination to regulation, steering, collaboration and integration.

As the term suggests, collaborative governance is rooted in the notion of collaboration (Schoburgh, 2007; Bowen, 2009; Jones, 2010; Minto-Coy, 2011; Brown, Langridge & Rudestam, 2016). Collaborative governance requires administrative capacity and strong leadership to coordinate the diverse roles and functions amongst all stakeholders. Having a strong organizational model ensures a level of structure and order. This model should be adaptable and sustainable (Jones, 2010; Schoburgh, 2007; Mahmood, 2010; Minto-Coy, 2011). This strengthens the capacity building of the network and organizational capabilities.

Collaboration requires a clear consensus on the goals being pursued jointly and the roles that each stakeholder plays in order to achieve that goal (Schoburgh, 2007; Bowen, 2009; Minto-Coy, 2011; Moloney, 2013). This clear understanding of the collaborative process and the policy being undertaken helps to reduce competition between stakeholders for ownership, ensures that there is no single perspective that takes precedence and most importantly prevents misunderstandings (Bowen, 2009; Jones, 2010; Minto-Coy, 2011). In addition, the outlined sharing of responsibilities increases the efficiency of the collaboration and allows for fair and equal distribution of work.

A shared consensus requires transparency. Stakeholders must have on-going and clear communication, again, as a way of minimising any misunderstanding and engendering trust between stakeholders (Bowen, 2009; Jones, 2010; Minto-Coy, 2011). Finally, it is essential that there is consideration of context. In other words, there should be investigation into the type of available resources and a solid understanding of the cultural, political and economic structure of the country in which a policy is applied (Bowen, 2009; Jones, 2010; Minto-Coy, 2011). In this way, the group can ensure that they are setting achievable goals and their strategy is suitable to the relevant conditions. This approach may result in increased commitment and motivation as the group of stakeholders meets each target. These requirements tend to improve the potential for successful

collaboration, increased resource production and achievement of pre-determined goals (Jones, 2010; Minto-Coy, 2011).

Both policy transfer and collaborative governance literatures indicate how essential the collaboration of stakeholders is to the success of policy (Grant, 2003; Bowen, 2009; Innes & Booher, 2010; Exadaktylos & Zahariadis, 2012; Moloney 2013). Understanding policy transfer as a type of collaborative governance process enables one to examine how different types of governance bear on a variety of societal issues (Evans, 2004). Other factors also affect the influence of governance as well. The number and type of stakeholders included in what should be a collaborative process, their motivation for involvement and their level of interaction are key determinants of policy success (Evans, 2004). Shafer (2014) notes the value of government collaborating with academics in policymaking due to their capacity to legitimise policy through developing an evidence-based policymaking approach. However, the involvement of academics is oftentimes limited to providing research, which can be used selectively in order to support state interests, thereby affecting the effectiveness of policy (Shafer, 2014).

This influence of different modes of governance on policy transfer is often discussed (Crawford & Newburn, 2002; Bissessar, 2002; Stoker, 2004; Evans, 2009; O'Brien, 2012; Goldin, 2013; Morales & Harris, 2014). Collaborative governance has many proposed benefits. Where stakeholders who are actively involved in decision-making, are more likely to be successful than others in both developing policy for stakeholders and implementing it through pooling of resources (Huxham, 2000; Newburn & Crawford, 2002; Ansell & Gash, 2008; Evans, 2009; Sirianni, 2009; Emerson, Nabatchi & Balogh, 2011; Moloney, 2012; Brown, Langridge & Rudestam, 2016). By involving a range of actors with varying backgrounds, collaborative governance enables governments to find innovative ways of responding to societal issues. Academics, CSOs and business sector stakeholders bring unique benefits to the network through collaborative governance.

CSOs bring their approach of volunteerism, advocacy and cost-effective benefits of service provision, while academics contribute to effective programme creation through evidence-based solutions (Jones, 2010; Moloney, 2013; Macaulay, 2013). This involvement of multiple voices increases the likelihood of success by contributing to the resolution of a problem. State stakeholders are likely to be disconnected from non-state perspectives. By acquiring the input of non-state stakeholders, members of the public and CSOs that are more likely to be affected by the issue being faced, one ensures that the policy addresses it directly. The literature states that this approach to policymaking is likely to lead to overall improvement of capacity, state accountability, civic engagement, production of resources and ensures the delivery of an effective programme or policy (Ansell & Gash, 2008; Bowen, 2009; Innes & Booher, 2010; Jones, 2010; Minto-Coy, 2011; Moloney, 2013; Brown, Langridge & Rudestam, 2016)¹¹.

This thesis embraces Moloney's (2013) ladder of participation. This model is based on a Caribbean context (also a modified version of Arnstein's ladder of participation), to identify the type of collaboration taking place throughout the policymaking process¹². Moloney (2014) uses a ladder where the lower end is referred to as 'informing' and the upper end is full collaboration

¹¹For instance, Johnson (2015) discusses the collaboration that took place to develop legislation regarding adult prostitution in Vancouver. The collaboration of academics, legal professionals and most importantly sex workers contributed to this legislative reform. While academics and legal professionals provided evidence to challenge the incumbent prostitution laws, the inclusion of sex workers created a campaign that acknowledged how these laws impacted the lives of sex workers negatively and assembled recommendations that would improve their situation (Johnson, 2015). As a result, there have been reports of improved interaction between the police and sex workers, continued concern and support for sex workers by the state, on-going public awareness efforts and overall increased neighbourhood safety (Johnson, 2015).

¹²Arnstein proposes that there are gradations of involvement in a collaborative process. She (1969) developed a continuum that is used widely within literature on participation called the 'ladder of participation'. She (1969) argued that the use of a ladder highlights the various degrees of participation in citizenship (as seen in Bishop & Davis, 2002). Some academics have used this idea that is commonly used for citizens, in order to assess the level of inclusion of CSOs (Donohue, 2004; Bowen, 2005; Jones, 2010; Moloney, 2013).

(partnership)¹³. In between these two extremes are various forms of involvement: (i) consultation, (ii) placation, (iii) cooperation and (iv) coordination (See Appendix One). The first three on the ladder (consultation, placation and cooperation) are considered to be tokenistic in nature. Tokenistic states denote a lack of interest in stakeholder participation by the state. These are highlighted by short-term and informal interaction and a failure to incorporate the views of non-state stakeholders into the policy outcome (Bowen, 2009, p 74; Moloney, 2013). States might *inform* citizens of policy choices via citizen meetings or *consult* them through the administration of surveys. However there is an effort made to limit participation in governance activities that have a direct influence on policy development (Moloney, 2013).

Coordination and collaboration involve meaningful participation. Coordination is characterised by an on-going relationship between actors that involves shared goals and responsibility in achieving tasks. Collaboration involves closer connections and overlapping of connections, resources and boundaries (Moloney, 2013). I argue that the Jamaican government had meaningful coordination with its donor countries, while all other stakeholders made at most, minor contributions to the development of RJ policy. This is evidenced by the lack of awareness of the policy by identified civil society partners, the fight for ownership of policies between political parties, the poor public consultation efforts and the intentional exclusion of other non-state stakeholders, such as the leaders of informal justice systems.

As I will discuss, the Jamaican government failed to embrace collaborative governance throughout the development of the national RJ policy. In keeping with the literature on policy transfer failure, the Jamaican government was guilty of poor administration, lack of consensus on roles of stakeholders and failure to consider context. I propose that there has been an exclusion of

¹³ It is understood that the Jamaican State does not engage in full participation nor does it completely exclude all stakeholders, that is, non-participation.

civil society and the Jamaican public from RJ policy-making. Given the contextual issues examined in this thesis, such as political competitiveness and corruption, politicisation of the voluntary sector and public mistrust and the corresponding dependence on informal justice systems, this thesis works to advance the discussion of the benefits of collaborative policymaking approaches and identification of what conditions affect its success.

Research Questions

Policy transfer analysis seeks to strengthen the understanding of the cross-cultural transfer of knowledge about policies from one sector to another in a different country (Evans, 2009). As the first in-depth assessment of justice policy conducted in Jamaica, this thesis seeks to describe how policy transfer took place to explain why policy transfer occurred and to prescribe recommendations that would have allowed the policy transfer to achieve a greater level of success. I focus on answering two central research questions:

- (i) What factors influenced the process of penal policy transfer within the post-colonial, pluralist jurisdiction of Jamaica?
- (ii) How did these factors affect the capacity of RJ to address crime in Jamaica?

Contributions

The discussion of RJ in what follows lies at the intersection of political science, Caribbean studies, and criminal justice studies. In answering (i) and (ii) and by providing the first case study of penal policy transfer in Jamaica, I seek to make a series of contributions to the regional justice and political science literatures as well as the wider political science literature in a number of respects.

First, this thesis contributes to academic discussion of penal policy transfer in developing jurisdictions (Jones, 2003; Jones & Newburn, 2007; Steinberg, 2011; Macaulay, 2013; Macfarlane

& Canton, 2014; Silva, 2015; Carrington, 2016). By providing an in-depth examination of how political, cultural, legal and economic contexts of Jamaica affect policy transfer and policymaking in general, this thesis will illuminate the policy process in developing states while highlighting distinctions between its impact on developing and developed jurisdictions. In doing so, this thesis makes a significant contribution to the development of the Dolowitz & Marsh framework by identifying an additional motivation for policy transfer (Dolowitz & Marsh, 2002; Stone, 2004; Blumer & Padgett, 2004). As will be discussed the motivation for transfer is a continuum, ranging from voluntary to coercive transfer. However, I propose that the RJ policymaking process in Jamaica is an example of *opportunistic* policy transfer. I posit that a jurisdiction engages in opportunistic policy transfer, where voluntary adoption of policy takes place irrespective of its exact content or its appropriateness at a time to a jurisdiction, but because adopting the policy is rewarded by the country it is adopted from financially or successfully engenders political support from the public by appearing to be responsive to an issue. Notwithstanding the lack of political will to embrace policy that is beneficial to the context of the jurisdiction, opportunistic policy transfer (which is disconnected from a genuine need to respond to an issue) is not likely to single out effective policy or even policy that applies at all outside the originating jurisdiction. This concept of opportunistic policy transfer expands the Dolowitz & Marsh framework and its understanding of ‘voluntary’ transfer and has practical use for policymakers across jurisdictions in identifying correlations between motivation for policy transfer and its subsequent success or failure.

From a methodological standpoint, this thesis also adds value to the Dolowitz & Marsh framework by being applied to penal policy transfer. Currently, the Dolowitz and Marsh framework is not applied to case studies of justice policy. Also, there are limited examples of its use to assess policy within developing or newly democratic jurisdictions (Bissessar, 2002; Randma-Liiv & Kruusenberg, 2012; Nethery & Gordyn, 2013). As will be discussed, the Dolowitz & Marsh

framework is a heuristic device: it provides a framework for identifying and learning various factors that affect policy transfer, rather than assuming a set of pre-determined factors (Dolowitz & Marsh, 2000; McFarlane & Canton, 2014; Ogg 2015). Therefore, the Dolowitz & Marsh framework has a particular value in its application to developing countries with policymakers, who are yet to identify policymaking trends in their jurisdictions and are not rigid in their institutional approaches to policymaking.

Second, there is relatively limited discussion of policy transfer within the Caribbean, particularly in the area of justice¹⁴ (Bissessar, 2000; 2002; Jones & Schoburgh, 2004; Hoyt, 2006; Ramdathsingh, 2014; Meikle & Jaffe, 2015; Harriott & Jones, 2016). There are two types of policy transfer literature; one that explicitly mentions policy transfer, and another that implies the spread of policies across jurisdictions, without labelling it as policy transfer (Evans, 2009). Much of the literature that discusses policy transfer in Jamaica is of the latter kind (Jones & Schoburgh, 2004; Harriott, 2009; Harriott, Lewis & Zechmeister, 2015; Harriott & Jones, 2016). This explicit identification of policy transfer and its causal factors is important in underlining the distinction between the conscious process of policy transfer and other forms of transfer, such as lesson-drawing and convergence. In turn, this advances the wider policy transfer literature, which calls for case studies to make these distinctions, in order to contribute to the evolving nature of policy transfer as a concept (Evans, 2009; Dolowitz & Marsh, 2012; Benson & Jordan, 2012; Oliver, Lorenc & Innvaer, 2014; Bender, Keller & Willing, 2014).

My in-depth assessment of justice policy transfer in Jamaica responds to the call for case studies on justice policy within the regional literature (Acosta, 2002; Harriott, 2009; Harriott & Jones, 2016). This thesis makes an empirical contribution to the limited discussion of penal policy

¹⁴Much of the discussion surrounding policy transfer in the Caribbean focuses on economic, health and environmental policy.

in Jamaica as the first case study that details the policymaking process of justice policy. Previous literature tends to focus on identifying the approach to justice and discussing the outcomes of these approaches, without considering how the process affects that outcome. The emphasis on Jamaica does not prevent uptake by the wider Caribbean literature as a means of comparing the policymaking process in other Caribbean jurisdictions and former British colonies.

While there is extensive literature on RJ, RJ within Jamaica and the Caribbean is restricted to a few papers (Williams, 2009; Taylor, Chauhan, Fondacaro, 2012; Wallace, Wylie & Gordon, 2013; Ali 2014). This thesis expands the literature on Caribbean RJ and will be of use to Caribbean countries that are, or will be, considering the implementation of RJ programmes. Not only will I highlight the mistakes of the Jamaican government in terms of its poor approach to governance and inappropriate policy transfer of RJ policy, but I will also propose an ideal form of Jamaican RJ that is specially well suited to the Jamaican political, social and economic context. In this way, my discussion on the effect of transfer of RJ policy from a region of a developed country (Canada) to the post-colonial, developing and legally pluralistic Jamaican context will break new ground. This discussion of RJ policy will also prove beneficial to guiding practitioners and policymakers to develop and implement RJ that is fit-for-purpose within similar regions.

Finally, I contribute to governance literature by expanding on the limited discussion on the role of non-state actors in governance processes such as policymaking. The concept of collaborative governance has been applied to a range of policy contexts, particularly environmental and health policy (Nicholson-Crotty & O'Toole, 2004; Emerson, Nabatchi & Balogh, 2011; Moloney, 2013; Brown, Langridge & Rudestam, 2016; Zurba, 2014; Fliervoet, et al, 2015; Hutter, 2016). However, much of the discussion of governance and policymaking tends to exclude jurisdictions where collaboration is not popular, such as the developing states of the South, including the Caribbean,

South Africa, Tanzania and Mexico¹⁵ (Minto-Coy, 2011; Moloney, 2013). There are only a few examples of case studies that provide evidence of the positive influence of collaborative governance on policy transfer in developing states, despite the fact that it is often proposed as a solution to failed instances of policymaking, including the Caribbean (Hill, 2004; Ewalt & Jennings, 2004; Benson, 2009; Moloney, 2012; Levy, 2012; Blake, 2012; Jaffe, 2015). Also, while there is substantial literature that speaks to the role of non-state criminal actors in governance, the discussion is limited to their capacity to govern at the community level, rather than their involvement in policymaking (Arias, 2006; Koonings and Kruijt, 2007; Jones and Rodgers, 2009; Meikle & Jaffe, 2015). This thesis can spearhead the discussion of possible roles for non-state violent actors in penal policymaking in Jamaica, as the government moves towards collaborative governance (Jones & Schoburgh, 2004; Bowen, 2009; Jones, 2010; Minto-Coy, 2011; Moloney, 2013; Lue, 2015; Anglin, 2015; Miller, 2017; Schoburgh & Ryan, 2017).

I propose that, as part of a collaborative approach, the inclusion of leaders of informal justice systems that operate within the Jamaica would have been beneficial to the policymaking process: namely certain criminal gang leaders and leaders of the Maroon community. As leaders of systems that contribute to the administration of justice within Jamaica, they have the potential to provide lessons on the needs of Jamaican citizens and on the operation of an informal system that can interact with the formal justice system. In addition, their consultation might have had a positive effect of improving public trust of the state by demonstrating the approval of trusted community leaders.

Chapter Summaries

¹⁵Instead, much of the scholarship based on collaborative governance is rooted in evidence from the US, Europe and Australia (Moloney, 2013). There is a correlation made between poor governance and failing economies, corruption and lack of political legitimacy (Rose-Ackerman, 2005).

This thesis is organised into 8 chapters. The next provides a comprehensive review of the relevant literature on policy transfer with a focus on justice policy transfer within the Caribbean. This will demonstrate how the current literature supports the main claims of the thesis and identifies the gaps that it aims to fill. In addition, I provide an overview of RJ literature and show that it lacks discussion on RJ policymaking, particularly within a Caribbean context. Chapter 2 discusses the methodological frameworks that frame this discussion of policy transfer. I explain the methodological approach to data collection, as I used a range of methods to collect qualitative information. I will also highlight some of the limitations faced during the collection of this data. Chapter 3 and 4 provide relevant background on the Jamaican context. Chapter 3 discusses how the political structure and history of political violence have affected policymaking in Jamaica. In addition to providing background on the political structure, it provides an overview of the societal class structure and the various local and international interests that the Jamaican government must attend to in order to maintain that structure. I identify the history of policy in Jamaica as largely motivated by semi-coercive and coercive policy transfer, which has led to ineffective justice policy and a relatively unchanged crime situation. However, I note the shift in policymaking away from a historically semi-coercive policy transfer due to changes between donor- recipient country relationships. Chapter 4 continues this discussion by suggesting that, despite the fact that some donors have increasingly facilitated the development and implementation of contextualised policy as well as the expansion of justice-focused CSOs who coordinate efforts with the state, the approach to policy making continues to give primacy to international interests when it opens up financial opportunities, has become embedded the political fabric of Jamaican culture. As a result, this opportunistic form of inappropriate policy transfer has emerged, where policymakers voluntarily engage in inappropriate policy transfer, in order to be perceived as being consistent with international agendas and interests. In Chapter 5, I discuss the concept of legal pluralism as well as the HR perspective on the presence of informal and formal justice systems operating within the

same jurisdiction. I propose, in keeping with this HR approach that informal systems can prove beneficial to the administration of justice, once they demonstrate respect for HR standards and work alongside the state. Finally, I highlight the legal pluralist nature of Jamaica, where there are informal justice systems operating alongside the formal justice system. This background demonstrates the need for justice reform by highlighting the failure of the justice system and the subsequent dependence of Jamaicans on informal justice systems. I go on to assess both informal and formal systems through the lens of a HR approach to legal pluralism, which advocates a collaborative approach under the supervision of the state. I suggest that the Jamaican government might have benefitted from considering the HR approach to legal pluralism in implementing RJ and that engaging in endogenous policy transfer would have been consistent with the aim of developing a contextualised national RJ policy that addressed the reality of Jamaican citizens. In Chapter 6, after discussing the effectiveness of RJ generally, I demonstrate the potential that RJ has to effect change in Jamaica and discuss how RJ might look, when developed collaboratively with consideration of context. Chapter 6 goes on to provide an overview of the history of RJ in Jamaica prior to its formal introduction by the state in the implementation of the national RJ policy, which has had limited success thus far. Chapter 7 details the development and implementation of the national RJ policy in Jamaica. Chapter 8 examines the RJ policy through the lens of policy transfer. It highlights how a lack of collaborative governance created a national policy that failed to consider the differences in the political, economic and cultural context of Jamaica and Nova Scotia, the exporter jurisdiction of the policy. This inappropriate policy transfer was compounded by poor implementation efforts, which explains the limited uptake of the RJ programme.

Chapter 1: Literature Review

There are many concepts in the literature that seek to explain or categorise the transfer of knowledge about policies across jurisdictions (Bennett, 1991; Rose 1993; Dolowitz & Marsh, 2000; James & Lodge, 2003; Jones & Newburn, 2007; Evans, 2009; Benson & Jordan, 2012; Stone, 2012; Monahagn, 2015; Ogg, 2015). I will review some explanations of policy transfer, in order to justify the concept of policy transfer that the thesis embraces; policy transfer as developed by Dolowitz & Marsh, which structures its discussion of policy without pre-determined assumptions and highlights other concepts that are key to policymaking, such as collaboration. I will then go on to discuss the relatively limited literature of justice policy transfer literature internationally as well as the same type of policy transfer literature that is specific to the Caribbean region.

Originally, policy transfer literature grew from studies involving the federal system of the US (Stone, 2004; Benson & Jordan, 2011). Increasingly, the concept of policy transfer now focuses on policy exchange that takes place between transnational communities, rather than domestic transfer only (Dolowitz & Marsh, 2000; Stone, 2004; Jones & Newburn, 2007; Crawford, 2011; Canton & McFarlane, 2014; Ogg, 2015).

Policy transfer analysis should seek to identify: (i) pre-decision making processes, (ii) the key actors involved, (iii) how the transfer of the programme was managed, (iv) how the policy was implemented, as well as (v) the causes for policy outcome (Evans, 2009). However, much of the literature only focuses on certain aspects of the policy transfer process. Many academics are interested in explaining *how* policies are transferred. For instance, policy convergence (Bennett 1991) is described as the tendency for societies to become similar in terms of structure, processes and performances (Dolowitz & Marsh, 2000; Drezner, 2001; Jones & Newburn, 2007). The literature does not always attribute this to interaction between states. Instead it simply notes without

explanation the increasing tendency of governments and policy-makers in different countries to arrive at similar resolutions to issues (Stone, 2000; Jones & Newburn, 2007; Marsh & Sharman, 2009). However, Bennett (1991), who focuses on the patterns created by the spread of policies across jurisdictions identifies a number of ways in which the spread of policies can occur including: (i) a deliberate emulation of policy from another place, (ii) elite networking, where expertise and information about policies in response to a common problem are shared, (iii) harmonisation of policies in order to be in line with international communities and, (iv) penetration, where states are forced to conform to certain policies.

As a concept, convergence has a number of limitations. Bennett (1991) limits his discussion to the similarities and differences between policies across jurisdictions without real consideration for how or why they occur. By focusing on the various routes through which convergence can take place, Bennett (1991) assumes it to be either an unconscious process or one that is rational and voluntary, with little consideration for unintended events and cultural context. Policy convergence places little emphasis on a range of factors that might influence the spread of policies, such as the role of policy actors as politicians, financial institutions and the international community as a whole (Stone, 2001). By neglecting the various factors that can affect the spread of policies, it assumes policymaking to be a rational process (Stone, 2004; Jones & Newburn, 2007; Ogg, 2015). Rose (1991) and Jones & Newburn (2007) argue that, as a result, convergence takes a ‘deterministic’ perspective, suggesting that policy development has a likely outcome, regardless of contextual factors. Convergence assumes the adoption of ideas and policies. However, the spread of ideas does not necessarily result in the adoption of any specific policy. In general, *the outcomes* of spread are not sufficiently considered. In addition, Jones & Newburn (2007) discuss the fact that convergence assumes similarity between policies, fails to consider the contextual differences that make

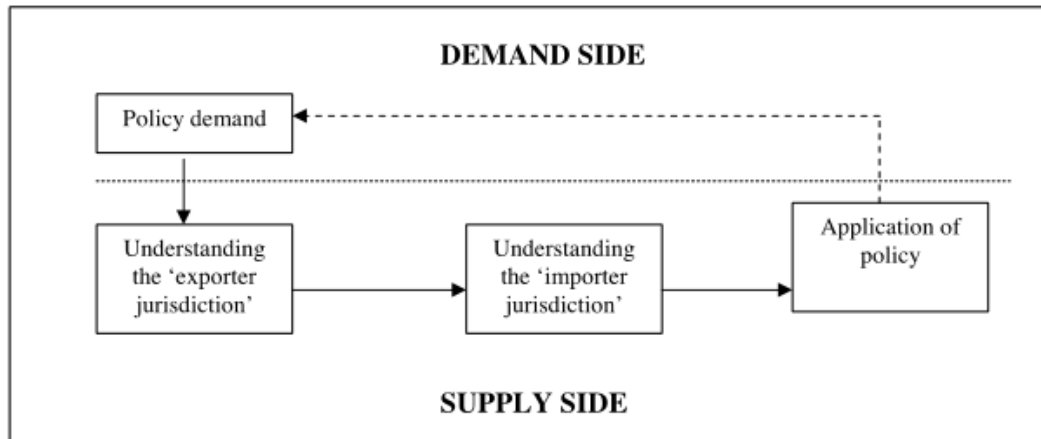
apparently similar policies dissimilar, once transferred. Though a certain policy may apparently spread across jurisdictions, the way in which it is implemented varies (Muncie, 2005).

On the other hand, Rose (1991; 1993) discusses the concept of lesson-drawing. Lesson-drawing is the process by which policy-makers look to policies and programmes in other places that might resolve their dissatisfaction with the status quo in their own environment (James & Lodge, 2003; Benson 2009). A lesson is defined as a description of a series of actions that a state can borrow as a result of experience in another space (James & Lodge, 2003). Lesson-drawing literature focuses on understanding the conditions under which policies operate and how they might be created elsewhere to make them effective in the importing jurisdiction (Page, 2000; Benson, 2009). In other words, states can make policy travel by learning from practices and policies that have been used in other spaces. Stone (2004) argues that this process engenders the adoption of coherent ideas and policies, otherwise referred to as consensual knowledge, which are accepted by the state and society. At the regional and international level, lesson-drawing informs the development of an international policy culture, which all states might be encouraged to take part in (James & Lodge, 2003; Stone, 2004; Ogg, 2015).

In an updated version of his concept of lesson-drawing, Rose (2005) has described a process that practitioners can use to assess the potential effectiveness of lesson-drawing. (i) learning the key concepts of the programme and determining the lessons that should be drawn, (ii) getting the attention of the policymakers, (iii) scanning alternatives and deciding where to look, (iv) studying by going abroad, (v) developing a generalised model of how the programme works in the foreign jurisdiction, (vi) domesticating that lesson for your own context, (vii) deciding whether the model should be adopted, (viii) deciding whether the lesson can be applied, (ix) simplifying the means and ends of the lesson, (x) evaluating the outcome of the lesson (James & Lodge, 2003; Stone, 2004;

Benson 2009; Ogg, 2015). From this outlined process, Rose (2005) notes that policy transfer involves a balance of supply and demand (as seen in Figure 1.0) (Page, 2000; Benson 2009).

Figure 1.0 Four Components of Policy Transfer (Rose, 2003)



Accessed

Benson, 2009.

Essentially, policymakers represent the demand side or the ‘satisfiers’, where there is limited enthusiasm for transfer, as they work to maintain status quo as much as possible. Typically, policymakers suffer from the constraints of focusing on path dependency and embedded interests. The supply side focuses on practitioners identifying and applying policies for transfer (Benson, 2009), including policies that might be imported from an external jurisdiction. As a result, their constraints relate to understanding the context of both the exporting and recipient jurisdictions as well as detailed understanding of the policy itself and the types of adjustments that will be required adopt the policy effectively. Policy should be adopted in a way that fits the social, political, legal and economic profile of the recipient country, while still achieving the intended goals of the policy itself (Benson, 2009).

In understanding these competing interests, Bennett recognises that there may be some variation in policy adoption, specifically degrees of borrowing. Borrowing may take the form of (i) copying, (ii) adaptation, (iii) hybridisation, (iv) synthesis or (v) inspiration (James & Lodge, 2003). As the term suggests, copying takes place when a programme or policy is adopted without any

changes. Adaptation does not involve direct copying but instead consider the contextual differences between the donor and recipient jurisdictions. Hybridisation and synthesis are indicated by a combination of elements that may be found in more than one place. Finally inspiration is where the donor countries inspire ideas and innovation within another jurisdiction, without direct replication of the original policy or programme. Rose (1993) argues that lesson-drawing is both positive and negative, as it indicates what should be done and avoided.

The application of the concept of lesson-drawing needs to be more nuanced in its explanation of transfer. The main critiques of Rose's work call attention to his omissions. First, he fails to relate the concept of lesson-drawing to the wider literature on policy transfer and to other forms of policy-making, particularly ones that take a rational approach (Evans & Davies, 1999; Evans, 2009). His notion of lesson-drawing does not consider fully the various issues that can affect the transfer of ideas, such as the varied motivation of actors to engage in the transfer of policies and resource availability (James & Lodge, 2003; Stone, 2004). Rose assumes that the adoption of policies from other countries is voluntary and unhurried (Dolowitz & Marsh, 2000; James & Lodge, 2003; Stone, 2004; Ogg, 2015). Rose (2001) states that policymakers adopt policies from other countries because they do not have time to develop policies independently. In addition, he argues that lesson-drawing and adoption of policy are motivated by some genuine need on the part of political actors to resolve an issue. Rose (1991; 1993) does not consider that countries might be coerced into adopting policies, as seen in many developing states. For instance, the US arguably coerced many countries to adopt certain penal policies by offering funding to address infrastructural needs, which also enabled them to expand their war on drugs (Macauley, 2013). USAID funded the expansion of maximum-security prisons in Colombia and Bolivia and encouraged the use of extended sentences for drug-related crimes (Macauley, 2013). Similarly, IFIs promised the South

African government assistance with the economic stability of the country, if South Africa adopted certain crime prevention policies¹⁶ (Steinberg, 2011).

Instead of exploring why policies might be adopted, Rose (1993) limits his discussion by providing a set of conditions in which lesson-drawing is likely to occur, such as the popularity of a programme in the donor country and the similarity in resources between governments. Yet such constraints are downplayed in his 2005 arguments. De Jong (2009) criticises Rose's '10-step plan', by noting that he downplays significantly the contextual constraints that can affect policy transfer and questions 'his apparent dislike of historical background' and selective 'unwillingness' to accept its effect on transfer. While he provides a model to assess the potential for learning lessons, he does not provide an overarching theorisation of policy change that can account for all variations of learning. His account focuses almost exclusively on the network, the agents operating within them and the policy outcome. As a result he negates the potential influence of the surrounding environment on the network and policy transfer in general. In this way, the lesson-drawing literature fails to account for the often, uneven nature of learning and other influential factors (Dolowitz & Marsh, 2000; James & Lodge, 2003; Stone, 2004; Stone, 2004; Ogg, 2015). While a more exhaustive identification of possible constraints to successful lesson-drawing would have been ideal, Rose does not provide any recommendations for how to overcome the ones that have been identified (Evans & Davies, 1999; Evans, 2009).

Finally, Rose has been accused of not providing the necessary tools for identifying whether or not lesson-drawing has indeed taken place (Evans & Davies, 1999; Evans, 2009). The concept of lesson-drawing, like that of convergence, assumes that policymaking is a voluntary process that follows a logical order (James & Lodge, 2003; Stone, 2004; Ogg, 2015). While these stages provide

¹⁶ I propose in this thesis that consistent criticism and pressure from the international community led to the adoption of justice policy from developed states in Jamaica.

an ideal for policy-makers to follow, it is difficult to use Rose's concept of lesson-drawing to evaluate whether or not a lesson has been adopted (James & Lodge, 2003; Stone, 2004; Evans, 2009). These stages, particularly the development of a domestic version of the borrowed policy, do not consider if the process actually results in successful policy adoption (Dolowitz & Marsh, 2000; James & Lodge, 2003; Stone, 2004; Ogg, 2015).

Dolowitz & Marsh (1996; 2003; 2012) are responsible for coining the term 'policy transfer'.

Policy transfer is defined similarly to other concepts mentioned,

"It is the process whereby knowledge regarding policies or political practices of one political system is used in the development of policies and practices in another political system (Dolowitz & Marsh, 2003; 2012, Patterson & Sloam, 2005; Hoyt, 2006; Marsh & Sharman, 2009) ¹⁷.

Policy transfer incorporates many of the ideas proposed by Rose (2005) and Bennett (1991).

Also it responds to the criticisms of convergence and lesson-drawing (Stone, 1999; Benson, 2009).

It extends the work of Rose (1993) and Bennett (1991) and introduces new ways of examining policy transfer. First, policy transfer expands on the discussion of how the transfer of policy happens by exploring transfer as both dependent and independent variables (Dolowitz & Marsh, 2000; Jones & Newburn, 2007; Evans, 2010; Benson & Jordan, 2011). That is, Dolowitz & Marsh explore policy transfer as a way of explaining policy innovation and subsequent success/failure, and they discuss the circumstances under which policy transfer occurs. This framework thus provides a more comprehensive discussion of policy transfer in policymaking than formulations that precede it (Dolowitz & Marsh, 2000; Evans, 2010; Benson & Jordan, 2011; Bender, Kelling & Willing, 2014).

¹⁷ Policy transfer is considered to be one of the causal factors of policy convergence. The more knowledge is exchanged between states, the more likely convergence will take place. However, not all types of policy convergence occur as a result of policy transfer (James & Lodge, 2003; Stone, 2004; Ogg, 2015).

Second, Dolowitz & Marsh (2012) provide a comprehensive framework, which acts as a heuristic. One of the main critiques of policy transfer is that it does not provide rigorous tools to examine the policymaking process (Evans, 2009). As will be discussed the Dolowitz & Marsh framework suggests a comprehensive series of questions that explore how and why transfer takes place. Through these questions, they are able to consider a range of possibilities, rather than assuming pre-determined contributing factors (Dolowitz & Marsh, 1994; 2000; James & Lodge, 2003; Smith, 2005; Benson & Jordan, 2011).

Dolowitz & Marsh (2000) use questions as a means of exploring the various dynamics of policy transfer¹⁸. Dolowitz & Marsh (1994; 2000) do not assume the rationality of policy transfer. As mentioned, both convergence and lesson-drawing are concerned with rational intentional transfer. By contrast, Dolowitz & Marsh discuss both purposive and involuntary forms of policy adoption (Jones & Newburn, 2007; Monahagn, 2015; Ogg, 2015). Also, Dolowitz & Marsh (2000) consider the fact that policies and ideas can be exchanged horizontally and vertically (Dolowitz & Marsh, 2000; Stone, 2004; McFarlane & Canton, 2014; Monahagn, 2015). Essentially, they recognise the ‘messy’ nature of policymaking and its susceptibility to coercion and a range of contextual factors, unlike lesson-drawing, which undermines the extent of their influence (Dolowitz & Marsh, 1996; 2000; Jones & Newburn, 2007; Ogg, 2015). Also, the framework does not assume the success of policy transfer. Rather, the Dolowitz & Marsh framework identifies whether or not policy transfer has occurred and where it has not been successful and the reasons for its failure. I will now enlarge on the framework.

¹⁸While engaging in policy transfer, policymakers should consider how the policy works in the originating country, so that it can be modified for implementation within the borrowing jurisdiction. In this way, policy transfer can become a more efficient process that has the potential to be more successful in addressing these issues (Stone, 2001; 2004; James & Lodge, 2003; Paterson & Sloam, 2005).

Dolowitz & Marsh Framework

The Dolowitz & Marsh framework (2000) attempts to contextualise the discussion of policy transfer by asking a series of questions: (i) who is involved in policy transfer?, (ii) What is the motivation to engage in policy transfer?, (iii) What is being transferred?, (iv) What is the degree of transfer taking place?, (v) From where are lessons drawn?, (vi) What factors enable or constrain transfer?, (vii) What is the effect of policy transfer on the success or failure of policymaking (Dolowitz & Marsh, 2003; Jones & Newburn, 2014) (See Figure 1.1) ?

Figure 1.1 Dolowitz and Marsh Framework

Why Transfer? Continuum			Who Is Involved in Transfer?	What is Transferred?	From Where?			Degrees of Transfer	Constraints on Transfer	How To Demonstrate Policy Transfer	How Tran- sfer Leads to Policy Failure
Want To.....Have To											
Voluntary	Mixtures	Coercive			Past	Within-a- Nation	Cross- National				
Lesson Drawing (Perfect Rationality)	Lesson Drawing (Bounded Rationality)	Direct Imposition	Elected Officials	Policies (Goals) (Content) (Instruments)	Internal	State Governments	International Organizations	Copying	Policy complexity (Newspaper) (Magazine) (TV) (Radio) Past Policies	Media	Uninformed Transfer
	International Pressures (Image) (Consensus) (Perceptions) Externalities Conditionality (Loans) (Conditions attached to Business Activity)	Bureaucrats Civil Servants	Programmes	Global	City Governments	Regional State Local Governments	Emulation			Reports (Commissioned) (Un- commissioned)	Incomplete Transfer
	Pressure Groups Political Parties	Institutions	Ideologies		Local Authorities		Mixtures	Structural Institutional Feasibility		Conferences Meetings/Visits	Inappropriate Transfer
	Obligations	Policy Entrepreneurs/ Experts	Attitudes/ Cultural Values				Inspiration		(Ideology) (Cultural proximity) (technology) (economic) (bureaucratic) Language	Statements (written) (verbal)	
			Consultants Think Tanks Transnational Corporations Supranational	Negative Lessons		Past Relations					

(Accessed from Dolowitz & Marsh, 2012).

Who is involved in policy transfer?

The literature on policy transfer identifies it as a pluralistic social process that involves a range of actors in policymaking. Dolowitz & Marsh (1996; 2003) have identified 9 categories of state and non-state actors that are typically involved in policy transfer (Dolowitz & Marsh, 1996;

Dolowitz & Marsh, 2000; Stone, 2001; Abrams, 2002; Benson & Jordan, 2003; Acosta, 2005; Benson & Jordan, 2011; Cahn, 2013). These include (a) elected officials, (b) political parties, (c) civil servants, (d) pressure groups, (e) policy entrepreneurs and experts, (f) transnational corporations, (g) think tanks, (h) supra-national governmental, and (i) non-governmental institutions/ consultants (academics)¹⁹.

The literature indicates how essential the collaboration of stakeholders is to the success of transfer (Grant, 2003; Bowen, 2009; Innes & Booher, 2010; Exadaktylos & Zahariadis, 2015; Moloney 2013). There is particular emphasis within the literature on involving non-state stakeholders in decision-making activities that affect the well-being of society (Bishop & Davis, 2002; Burnstein, 2003; Schoburgh, 2007; Moloney, 2013). As will be highlighted in my discussion of Jamaican justice reform, there is a tendency of states to draw lessons from a small pool of actors (Dolowitz & Marsh, 1996; Benson & Jordan, 2003). Oftentimes this can result in reinforcing the status quo, instead of achieving the intended reform (Dolowitz & Marsh, 1996).

What is the motivation to engage in policy transfer?

Different agents in the list given will have different motives for engaging with policy transfer (Dolowitz & Marsh, 2000; Benson & Jordan, 2003). Dolowitz & Marsh (1996; 2003; Jones & Newburn, 2014) state that policy transfer should be seen as part of a continuum, where voluntary transfer (lesson-drawing) and coercive transfer (direct imposition) are the two extremes (See Figure 1.2).

¹⁹ Stone (2004) identifies an emerging group, referred to as policy networks. The networks consist of policy organisations that work alongside academics, civil society and other non-state actors to develop and implement policies under the charge of governments and international organisations (Stone, 2004; Prince, 2012). Often they are seen to be more flexible, self-organising and have a greater range of freedom in searching for ideas and have some relationship with non-state actors, indicating that the context of the implementing country is more likely to be considered (Prince, 2014).

Figure 1.2. Dolowitz and Marsh Policy Transfer Framework Continuum

Voluntary----|----Semi-Voluntary-----Obligated-----Semi-Coercive----- Coerced

Opportunistic

Coercive transfer occurs when a state is forced to implement certain policies. On the other hand, voluntary transfer is a genuine response to an issue with the status quo, where full information about the range of options is used to determine which policy choice might provide the best outcome (Dolowitz & Marsh, 1996; 2003). Typically, policy transfer falls somewhere in between these two boundaries and can involve more than one type of motivation (Dolowitz & Marsh, 2000; James & Lodge, 2003). Indirect coercive transfer takes place when there is pressure to adopt similar policies in order to be in line with the international community (Dolowitz & Marsh, 2000; James & Lodge, 2003). As discussed, IFIs are responsible for imposing these pressures on developing nations that are dependent on international funding for economic sustainability, while political parties are pressured to adopt policies as a way of legitimising their own agendas and accessing funding from IFIs (Dolowitz & Marsh, 1996; 2003; Jones & Schoburgh, 2004). I seek to contribute to the ongoing development of this framework by introducing the concept of *opportunistic* policy transfer (See Figure 1.2), which is based on the perceived need to gain political and financial favour with the public and international donors respectively, but without any direct pressure or obligation from the donors themselves. By discussing opportunistic policy transfer, I provide an example of how voluntary transfer does not necessarily correlate with a genuine will to resolve an issue.

What is being transferred?

The Dolowitz & Marsh framework identifies seven things that can be transferred (Dolowitz & Marsh, 1996; 2000; Benson & Jordan, 2011). These are: (i) policy goals, (ii) structure and content, (iii) policy instruments or administrative techniques, (iv) institutions, (v) ideology, (vi)

ideas, attitudes and concepts and, (vii) negative lessons (Dolowitz & Marsh, 1996; 2000; Benson & Jordan, 2011)²⁰.

From where is information transferred?

Policy transfers can be exogenous or endogenous (Benson & Jordan, 2011). More specifically, information can be transferred from 3 areas, the international community as well as the national and local communities. Actors can draw lessons from the history of political systems and other institutions within their own country. In addition, the national government can learn or adopt information from lower levels of governance. Dolowitz & Marsh (2003) note that endogenous transfer is ideal to start a policy search because it is a time and resource-saving approach. An endogenous approach ensures that there is a basis for comparison in terms of context. Actors can learn about what has been attempted and why these attempts succeeded or failed within a similar setting.

What is the degree of transfer?

There are a number of different ways in which policy transfer can take place (Dolowitz & Marsh, 1996; Dolowitz & Marsh, 2000; Benson & Jordan, 2011). Dolowitz expands on the original continuum created by Rose (1993) (See Figure 1.3).

Figure 1.3 Degrees of Policy Transfer

Direct copy-----Emulation----Hybridisation & Synthesis----Inspiration

These categories are drawn almost directly from the categorisation created by Rose (1993).

Policy transfer can involve any number of these degrees within a particular case (Dolowitz &

²⁰ In modifying the original framework, Dolowitz & Marsh (2000) have added an 8th element; programmes. They propose that this should be a separate category from policies, which imply a transfer of theories as opposed to the action of implementing a programme (Dolowitz & Marsh, 2000).

Marsh, 2003). It is likely that motivation will play a role in the degree of transfer taking place. A state that is interested in responding to an issue quickly might copy or emulate a policy (Dolowitz & Marsh, 1994; 2004). However, it may be ideal to combine elements from different sources in order to respond to an issue.

What enables or constrains policy transfer?

Drawing from Rose (1993), Dolowitz & Marsh (1996) have identified a number of factors that can either enable or constrain policy transfer²¹. Demand constraints deal with convincing policymakers of the need for change and the demand for transfer (Benson, 2009). Timing or the ‘issue attention cycle’ can affect these constraints as they shape how the need for change is perceived (Downs, 1972; Stone, 1999). For instance, a pandemic or outbreak may motivate the need for policy transfer, since there is a quick response required to an issue. Thus uncertainty is likely to increase the motivation to transfer policy (Benson, 2009). Programmatic constraints relate to the limitations of the programme itself, such as the complexity of the programme or the unpredictability of the programme (Benson, 2009). Of course, this constraint is exacerbated by the distinction between political and social contexts as well as the objective of transferring the policy. For instance, Benson (2009) discusses the failure of transfer of the Child Support Agency programme from the USA to the UK to the UK’s neglect of the influence of federal institutions on the distribution of child welfare in the donor country, which is absent in their own jurisdiction. Contextual constraints include issues related to the effect of past policies, political ideology, resources and political context (Benson, 2009). Policies that are transferred are implemented within pre-existing contexts, such as existing commitments to international organisations or the current approach to punishment within the justice system. Policy transfer is more likely to be successful where both jurisdictions have

²¹These issues are more likely to arise with hard copying of policies and programmes, rather than softer forms of transfer, such as inspiration, where constraints can be considered and negotiated accordingly.

similar political ideologies (Benson, 2009). Finally, application constraints consider the types of changes needed to implement the transfer, such as how information on new policy options are evaluated by policymakers, in-depth knowledge of both jurisdictions, as well as adjustments that need to be considered in adopting a certain policy or lesson, such as institutional capacity and transaction costs (Benson, 2009). For instance, some difficulty was noted in transferring HIV programmes to a number of developing states because they did not acknowledge the differences in institutional capacity. More specifically, some countries did not have the capacity to collect epidemiological data (Benson, 2009).

How do these factors affect the success or failure of policy transfer?

Regardless of the arena, policy transfer from developed to developing countries does not often result in the development of effective policy (Duke, et al. 2016; Schmidt & Huenteler, 2016; Evans, 2017). The literature identifies 3 different types of policy transfer failure. These are: (i) inappropriate, (ii) uninformed and (iii) incomplete policy transfer (Dolowitz & Marsh, 2003; Stone, 2017; Giest, 2017). Uninformed policy transfer takes place when the borrowing country has insufficient information about the policy or practice being transferred. Incomplete policy transfer takes place when integral aspects of the policy in the original country have not been transferred to the borrowing country (Stone, 2001; 2003; 2017; James & Lodge, 2003). Inappropriate policy transfer fails to acknowledge the cultural, political, social and economic distinctions between the country that is borrowing and the country that policy and practices are being borrowed from (Dolowitz & Marsh, 1996; Stone, 2017).

Dolowitz & Marsh (1996) demonstrate how the voluntary/coercive nature of policy transfers affects policymaking. The literature on inappropriate policy transfer indicates that a lack of genuine motivation to improve the well-being of the society can contribute to the failure to consider the

differences in context and conduct a thorough search for policy that would fit the needs of the borrowing country (Dolowitz & Marsh, 2003; Jones & Schoburgh, 2004; Stone, 2017; Giest, 2017). Ultimately this can result in a disconnect between the policy and its implementation because the policy is not related to the needs on the ground in the borrowing country.

I shall argue that policy transfer, as discussed by Dolowitz & Marsh (1994; 2000), is the most suitable approach to discussing the adoption of penal policy in Jamaica. The level of flexibility that is provided by its structure and use of questions makes the framework ideal for understanding of policymaking through case studies (Jones & Newburn, 2007; Ogg, 2015). This is particularly true for the case of Jamaica, where there has not been many justice reform efforts available to examine. While the limited discussion of penal policymaking within the region and across justice policy literature in general may force researchers to make assumptions, the concept of policy transfer as understood by Dolowitz & Marsh allows for a comprehensive examination of how and why policy transfer takes place and the identification of contextual factors that should be considered. My expansion of the Dolowitz & Marsh framework to include opportunistic policy transfer will add to the comprehensive nature of the framework and highlights the nuanced nature of policymaking and the effect of context on the process. In particular, it speaks to how a voluntary form of policy transfer can still result in ineffective policy transfer.

Having discussed the general policy transfer literature, I will now go on to more relevant literature on *justice* policy transfer internationally as well as in the Caribbean. This discussion will highlight such commonly emphasised factors as the influence of the IFIs on implementation of justice policy, the failure to contextualise or ‘domesticate’ justice policy, as well as the lack of collaboration in policymaking. It will note the lack of case studies on justice policy in developing jurisdictions and more specifically, the Caribbean as well as the limited examination of RJ policy.

Justice Policy Transfer Literature

Within the policy literature, there is a substantive discussion of the transfer of elements of policies within and across jurisdictions (Jones & Newburn, 2007; Monahagn, 2015; Meikle & Jaffe, 2015; Ogg, 2015; Marier, 2016; Evans, 2017; Stone, 2017). There is substantial discussion of justice policy in developed countries within policy literature, but less on developing states (Jones & Newburn, 2007; McFarlane & Canton, 2014; Ogg, 2015; Welsh & Harris, 2016; Boushey, 2016). There is relatively limited use of frameworks in policy analysis, since discussions centre on the outcome instead of the effect of the policymaking process. Nevertheless, given the increase in crime and incarceration rates across a number of developed and developing jurisdictions, the types of discussions on justice policy are expanding (Jones & Newburn, 2007; Sharman, 2008; McFarlane & Canton, 2014; Ogg, 2015; Monahagn, 2015; Jaffe, 2015; Welsh & Harris, 2016).

Academic examination of penal policy transfer has been prompted by the noticeable similarities in policies across jurisdictions (Jones & Newburn, 2007; Ogg, 2015). As noted, the existing literature identifies globalisation as creating an internationalisation of crime (Jones, 2003; Jones & Schoburgh, 2004; Barrows, 2014). In response, the international community has engaged in what is referred to as global governance. Global governance is the idea that certain public policy problems that affect more than one state or region can be handled by a 'global' unified response (Duffield & Donini, 2014; Haas, 2015). Muncie (2005) and Jones & Newburn (2007) focus on the similarities of a range of justice policies between the UK and the US in response to shared issues of drug trafficking and sexual violence. In addition, Dolowitz & Marsh (2012) note the adoption of American and British welfare-to-work policies across Europe. They note that globalisation has contributed to the homogenisation of justice policies. In particular, a zero-tolerance approach that imposes harsh sentences on juvenile and adult offenders for minor offences is used across jurisdictions (Muncie, 2005; Jones & Newburn, 2007).

The literature highlights multilateral organisations, such as World Trade Organisation (WTO) and International Monetary Fund (IMF), as the main proponents of global governance. Funding is also provided by the European Union (EU) in exchange for implementation of approaches that are in keeping with their policies (McFarlane & Canton, 2014). For instance, the EU assisted the Turkish government in the development and implementation of policies for the Turkish Probation Service by sending a team of policy consultants, trainers and probation officers to work alongside the Turkish probation team. In addition, Molina & Aberola, (2003) discuss the impact of globalisation on juvenile justice in Spain. They note the influence of international HR organisations as well as the EU in the shift towards a restorative approach to juvenile justice in Spain (Molina & Alberola, 2003).

Stone (2013; 2015) discusses the creation of policy networks and entrepreneurs as a result of globalisation. Policy networks consist of policy organisations that work alongside academics, civil society and other non-state actors to develop and implement policies under the charge of governments and international organisations (Stone, 2013; 2015; Prince, 2012)²². McFarlane & Canton (2014) discuss the partnership between the UK, Croatia and Turkey. They refer to the process of ‘twinning’, which is essentially, the development of a partnership between EU states and other states hoping to gain membership that allows for the transfer of expertise and assistance with capacity building across public sectors.

Justice policy literature indicates that global governance literature has neglected the importance of differences in the political, economic and social contexts between the importing jurisdiction and the donor country or developed countries that have inspired a particular standard (Newburn & Crawford, 2002; Bissessar, 2002; Jones & Newburn, 2007; McFarlane & Canton,

²² Often they are seen to be more flexible, self-organising and have a greater range of freedom in searching for ideas and have some relationship with non-state actors, indicating that the context of the implementing country is more likely to be considered (Prince, 2012).

2014; Ogg, 2015; Unwin et al. 2017). Understanding the changes that might occur to policy as it moves through space and time, justice policy literature notes that policies will manifest differently as a result of the variation in contexts. For instance, states within the US have made use of a number of zero-tolerance policies such as curfews, a 3 strike rule²³ and electronic monitoring of young offenders (Newburn, 2002). However, within the US, different states have implemented the use of the 3-strike rule differently. The consequences of 3 strikes vary across states. In Montana, being 'out' carries a consequence of life imprisonment, unlike the potential sentence of up to 25 years in Pennsylvania. Also, Steinberg (2011) points out that many South African crime prevention policies were adopted from Britain as a result of the pressure felt to be in keeping with best practice dictated by developed jurisdictions. In doing so, the South African government failed to address their context-specific issues as a developing post-colonial state.

The literature suffers from a dearth of empirical work that examines specific instances of penal policy transfer (McFarlane & Canton, 2014; Jones & Newburn, 2007; Silva, 2015). Where there is empirical research on justice policy transfer, it focuses on transfer between the UK and the US and European countries (Dolowitz & Marsh, 2000; James & Lodge, 2003; Jones & Newburn, 2007; Steinberg, 2011; McFarlane & Canton, 2014). This is due, in part, to the limited focus on the policymaking processes and the unwillingness of officials to provide information across jurisdictions (Jones & Newburn, 2007; Ogg, 2015). In its limited way, this thesis corrects this tendency, by examining policy transfer of justice policy between developed and developing states.

Again, many articles focus on outcome rather than process. They use transfer as an independent variable and do not discuss the issues that might have affected the process of transfer, such as the motivation of policymakers or the current value of the justice system in place. This

²³ The 3-strike rule is legislation that is intended to deter repeat offending, by increasing the severity of punishment for each offence (Newburn, 2002).

thesis expands on this limited discussion by confirming that policy transfer has taken place (rather than assuming that transfer has taken place) and examining how the management of the policy transfer process affected the success of the policy and more specifically, the impact of RJ on crime in Jamaica.

Justice Policy Transfer Literature in the Caribbean

I now discuss the limited literature on justice policy on developing states and in particular on Jamaica and the Caribbean. Many of the policy transfer case studies fail to go beyond interaction between developed countries (Jones & Newburn, 2007; Steinberg, 2011; McFarlane & Canton, 2014; Monahagn, 2015; Ogg, 2015). As a consequence, the literature calls for case studies of policy transfer in Caribbean countries²⁴ (Dolowitz & Marsh, 1996; Sharman, 2008; Ogg, 2015).

This lack of emphasis on the Caribbean is surprising. Historically, coercive policy transfer can be seen within post-colonial states, including Jamaica, where legislation and institutions from colonising states was transferred forcibly to colonies (Bissessar, 2002; La Guerre, 2002; Molina & Alberola, 2003). As a post-colonial region, the Caribbean is an important site of policy transfer, as the imposition of policy by developed states on developing jurisdictions has continued. However, only a few papers mention policy transfer in this area (Bissessar, 2002; Jones & Schoburgh, 2004;

²⁴ This case study of justice policy transfer is of particular important to the diverse context of the Caribbean. The wider literature notes the varying outcomes of policy transfer, even within developing countries that share certain characteristics such as a lack of resources and dependence on international funding (Bissessar, 2002; Page, 2002; LaGuerre, 2002; Sharman, 2008). While policy transfer is a universal practice, outcomes manifest differently across jurisdictions. For instance, despite their similar context in terms of limited financial resources and political corruption, the introduction of policies that seek to moderate relationships between ethnicities in French-speaking Caribbean countries has been more successful than in British colonies like Jamaica, due to the presence of ethnically and racially diverse populations of the former (La Guerre, 2002). This case study is essential to understanding the nuances of justice policy transfer in Jamaica specifically, but can also be useful in comparing this context within a region that shares issues, within a diverse range of contexts.

Hoyt, 2006; Schoburgh, 2007; Tennant & Clayton, 2010; Harriott, 2009; Harriott & Jones, 2016; Gereffi, Bamber & Fernandez-Stark, 2016; Scobie, 2016). Where it is mentioned, much of the discussion focuses on economic, environmental and health policy. In *Policy Transfer, New Public Management and Globalization* (2002), Bissessar's discussion of policy transfer throughout the Caribbean places an overwhelming emphasis on New Public Management (NPM) and the imposition of neoliberal economic policies (Bissessar, 2002).

In addition, there is limited scholarly discussion of justice policy in Jamaica, despite the well-documented severity and widespread distribution of crime (Harriott, 2000; 2002; 2003; 2008; 2009; Williams, 2009; Tennant & Clayton, 2010; Meeks, 2008; 2011; Harriott et al. 2013; Harriott & Katz, 2015; Harriott & Jones, 2016; Maguire & Johnson, 2016). The discussion on justice policy in Jamaica is limited mostly to identifying approaches used to address crime rather than evaluating the process that led to the creation of the policy itself (Harriott, 1999, 2009; Headley, 2002; Jones, 2003; Acosta, 2005; ECLAC, 2008). This might be due to the limited efforts of the Jamaican government to develop and implement justice policy altogether (Jones, 2003; Acosta, 2005; Harriott, 2009). Many of the sporadic efforts to improve the penal system have focused on maintaining the status quo of selective severe punishment and occasionally improved infrastructure and increased law enforcement training of police forces (Spiller et al, 2003; Jones & Schoburgh, 2004)²⁵. However, emerging discussions speak to the importance of collaboration in public policy development. For instance, Harriott, Lewis & Zechmeister (2015) consider a community-driven approach to crime. As part of this approach, they recommend the involvement of the public and civil society in policy development. In addition Harriott & Katz (2015) note the importance of considering contextual differences when adopting policy from America and European states in the

²⁵ For instance, much of the financial resources allocated towards the JCF and correctional services have been used for training and equipment (Acosta, 2005).

Caribbean. In particular he states that governments should ensure that programmes being adopted address the fundamental contextual factors.

Also, recent politics literature has noted the overwhelming influence that international funding agencies have on justice policy prescription in the Caribbean specifically (Bissessar, 2002; James & Lodge, 2003; Jones & Schoburgh, 2004; Marsh & Sharman, 2009; Harriott, 2009; Meikle & Jaffe, 2015; Harriott & Jones, 2016). Dominant forces within the global community use weaker states as ‘guinea pigs’ to test the effectiveness of policies²⁶. For instance, the WB has noted that their development of ‘best practice’ policies has been hindered by its ad hoc nature and constrained by a lack of research (Ferguson, 2002). There is some discussion of the influence of financial institutions on penal policy in Jamaica. Some literature highlights the semi coercive nature of penal policy transfer by noting the pressure felt by developing states to adopt policies endorsed by IFIs (Harriott, 1999; 2003; 2009; James & Lodge, 2003; Robotham, 2003; Jones & Schoburgh, 2004; Evans, 2009; Marsh & Sharman, 2009; Leslie, 2010; Moloney, 2012; Daley, 2013; Harriott & Jones, 2016). International approaches are adopted readily within the Caribbean due to the wish to be perceived as ‘keeping up’ with developed counterparts (Jones & Schoburgh, 2004; Schoburgh, 2007; Ricketts, 2010; Levy, 2012; Daley, 2014). By adopting these ‘best practice’ policies and approaches, the Jamaican state attempts to improve its credibility and maintain positive relationships with their funding donors for on-going support (Spiller et al, 2003; Jones & Schoburgh, 2004; Schoburgh, 2007; Tennant & Clayton, 2010; Steinberg, 2011). For instance, there was some pressure from the US and the UK to address drug trafficking in Jamaica, due to the effect that it had on crime rates within their own jurisdiction (Levy, 2009; 2012; Leslie, 2010). As a result, the Jamaican government has emulated policies from developed states such as the US, Canada and

²⁶ In this thesis, I propose that RJ stands as a unique example of policy, which does not carry the same level of uncertainty, due to its widespread success in addressing crime across a range of jurisdictions and its successful use on a grassroots level in Jamaica.

the UK in an effort to be seen as co-operating with those jurisdictions. Some of these efforts resulted in the extradition of one of Jamaica's biggest drug lords²⁷ Accordingly, the U.S government has praised the cooperation of the Jamaican government with its Drug Enforcement Agency (DEA) and has signalled a willingness to continue to support Jamaica's efforts (Leslie, 2010; Levy, 2012). As will be discussed, the failure to consider context has resulted in the implementation of ineffective policies in many developing countries that borrow policies from developed states such as the adoption of sex registers in Jamaica (Common, 1999; Spiller et al. 2003; Jones & Schoburgh, 2004; Schoburgh, 2007).

There are different policymaking styles within the Caribbean as well. La Guerre (2002) notes the varying manifestations of the same policies across Caribbean countries such as Trinidad and Jamaica, due to their differences in resources, despite their shared colonial history. Similarly, Daniel (2002) points out that French colonies are more likely to copy directly from their colonisers than British colonies, who prefer to adopt aspects of policies of the colonising power. This thesis will advance this discussion by examining whether or not this style of adopting policy is consistent with the approach to justice policymaking in Jamaica generally.

However there is a call for research that provides a more detailed evaluation of the development and implementation of various justice programmes and policies (Harriott, 2003; Robotham, 2003; Acosta, 2005; ECLAC, 2008; Harriott, 2009). I am unaware of any in-depth examination of the policymaking process for any particular policing, sentencing or correctional

²⁷ In particular USAID has spearheaded the development of the Community Empowerment and Transformation Project (COMET), a project that is directed towards the dismantling of gangs. In addition, the report from the Joint Select Committee, which considered the *2014 SOCA*, affirmed the importance of the legislation being in line with that of international best practice, by referring to the *UN Convention against Transnational Organised Crime* and examples of legislation from the US, such as legislation from California. Furthermore, some of the recommendations made from non-politically affiliated local organisations such as INDECOM were disregarded (Government of Jamaica, http://www.japarliament.gov.jm/attachments/1187_Anti-gang_report.pdf, accessed October 17, 2016).

policy in Jamaica. Therefore, this overview of Jamaican justice policy and the in-depth examination of the national RJ policy act as a significant contribution to the expansion of the discussion of national and regional policy literature on justice. This is particularly important since other British colonies in the Caribbean and commonwealth, and other developing states in general that might share similar issues to those examined within this thesis.

RJ Literature

As noted, there is a wealth of literature on RJ across jurisdictions. Much of the literature works to define RJ and identify its associated practices. I will now discuss who is involved in a restorative practices, introduce some of these practices identified in the literature (as I will reference them throughout the thesis) and go on to discuss the common themes across these practices.

Restorative Participants

RJ involves all participants affected by an offence—all stakeholders—in the restorative process (Morris, 2002; Von Hirsch et al. 2003; Llewellyn & Howse; Plaatjies, 2008; Sullivan & Tifft, 2008). In keeping with the relevant literature, the stakeholders are identified as: the victim, wrongdoer and the community.

It is generally understood that victims are the persons who suffer harm as a result of a particular crime. One can identify the victim by determining the source and their proximity to the harm. In restorative practices, the victim is identified as the person that has suffered harm directly as a result of the actions of the wrongdoer (Llewellyn & Howse, 1997; Braithwaite, 2002; Wenzel et al. 2008).

The wrongdoer is the person who directly causes harm to the victim. In RJ, an offender is expected to recognise his wrongdoing, repent publicly and undertake agreed actions to address the

harm (Wenzel et al. 2008). However, there is literature that highlights the overlapping characteristics of victims and offenders, in that offenders often suffer some harm, which contributes to their offending behaviour. Although offenders represent a diverse group of individuals, many have a number of social disadvantages (Delgado, 1985; Smit, 2007). The significant relationship between poverty and crime across jurisdictions has been well documented (Delgado, 1985; Raphael, 2004; Acosta, 2005; UNDP, 2012). A correlation between poverty, lack of education and crime is clear within the Jamaican context as well (Acosta, 2005; Witter, 2004; UNDP, 2012). For instance, a study carried out by Hooghe et al. (2010) looked at the relationship between inequality, poverty, and unemployment on crime in Belgium. Researchers collected crime data for 589 offenders in Belgium from 2001 through 2006 (Hooghe et al, 2010). It was noted that crime rates tended to increase in urban areas of Belgium, which supported the conclusion that poverty and increase in population density have an impact on the prevalence of both property and violent crime (Hooghe et al. 2010, p 13). Moreover, income level, unemployment and income inequality were related to crime rate (Hooghe et al. 2010).

The literature notes that, for many offenders, serving longer terms of imprisonment, these social disadvantages are exacerbated by the loss of liberty (UNODC, 2006; Holtfreter, 2004; Claire & Dixon, 2016; Hagan et al. 2017). Where prisoners are under restrictions for extended periods of time, offenders become less familiar with the community they wish to return to. In addition, offenders can suffer a range of psychological problems, including the impairment of social skills and social withdrawal (UNODC, 2006). Even if offenders did not have these social disadvantages before entering prison, their period of incarceration can lead to problems that increase the likelihood of reoffending, if remained unaddressed. Hagan et al. (2017) found a strong positive correlation between solitary confinement and post-traumatic stress disorder. Within a sample of 119

participants, 43% experienced solitary confinement and 28% screened positively for PTSD²⁸. RJ holds the offender accountable in a way that addresses the specific harm caused to the victim, but also facilitates modulating the impact of stated social disadvantages by provision of community support and retaining of rights and responsibilities associated with that of a law-abiding citizen.

There is some ambiguity regarding the definition of the third stakeholder, namely, the community (Ashworth, 2002; Wright, 2005; Plaatjies, 2008; Wenzel et al. 2008; Sullivan & Tifft, 2008; Zehr, 2015; Rossner & Bruce, 2016). In the case of RJ, community members are understood to be part of the wider social or legal grouping defined by the local jurisdiction, of which both the wrongdoer and victim are citizens. The role of the community is to censure the wrongdoer and hold him accountable for his wrongdoing²⁹. Participants of this wider group are often determined by the relationship with other stakeholders, their connection to the crime and the ways that they can contribute to the restoration process (Llewellyn & Howse, 1997; Ashworth, 2002; Rosenblatt, 2015). For instance, restorative programmes will often ask the ‘micro-community’ of family members and friends to participate in a restorative process in support of the victim and wrongdoer as they have direct ties to the parties (Llewellyn & Howse, 1997; Ashworth, 2002; Plaatjies, 2008). Gender equality advocates might participate in restorative process handling a sex offence as they have a direct stake in the issue of gender-based violence. In the case of a burglary, it may be useful to have members of the local community present to speak to the impact of the crime on their locale. Many VOM and RJ conferences invite volunteers to participate since they represent the interests of

²⁸ Across the sample, there were other issues that offenders faced prior to imprisonment, such as lifetime substance abuse and inadequate housing (Hagan et al. 2017).

²⁹ As stated later on in this chapter, the literature indicates that censuring the offender is more effective when those who are responsible for reproaching their actions are closer to the offender (Ashworth, 2002). In addition, it is likely that they will be more motivated to re-connect with communities that they feel close to.

the ‘macro-community’, who have been affected by the wrongdoing as well. Thus they have a responsibility to address the offending behaviour.

Restorative Practices

There are a number of practices that fall under the umbrella of RJ³⁰, including: (i) victim-wrongdoer mediation, (ii) community and family group conferencing, (iii) sentencing circles, (iv) peace-making circles, (v) reparative probation and community board and panels.

Victim-Offender Mediation

Victim-Offender mediation (VOM) is a practice that allows the wrongdoer and victim to meet under the supervision of a mediator and discuss a crime for which the wrongdoer has been convicted (Van Ness, 2005; Sullivan & Tifft, 2008; Plaatjies, 2008). Together, the parties agree on the terms of the meeting (RJ Council, 2010). This process results in a contract, where an offender agrees to undertake certain actions to make amends. VOM is said to be most effective when all parties are able to meet face-to-face, regardless of at what point in the justice process it takes place (United Nations, 2006). During these face-to-face meetings, victims are given the opportunity to express their feelings about the wrongdoer and the crime. In turn offenders are expected to agree to make reparation to their victims (Marshall, 1999). However, participants can opt for non face-to-face meetings as well (Marshall, 1999). In these cases, there may be someone asked to read a victim impact statement, which will convey the feelings of the victim. VOM is driven by the aim of achieving settlement, rather than focusing on reconciliation between parties (McCold, 2008). All parties agree upon the form that reparation takes, which should result in compensation to the victim and holding the wrongdoer accountable.

Restorative Circles

³⁰ I will discuss in detail only the most popular practices that have been acknowledged by the UN

Circle meetings are considered to be the most inclusive of all restorative practices, since, depending on the purpose of the circle, a wider range of community members can be incorporated into the process (Van Ness, 2005). Sentencing circles, which are used to inform the sentencing of offenders, will incorporate family members and other supporters. They can include traditional criminal justice stakeholders (such as the judges, attorneys and police officers) to assist in determining how all parties can best move forward after the crime (United Nations, 2006). On the other hand, Circles of Support and Accountability (COSA), which focus on supporting the reintegration of high-risk offenders after their release, will encompass a wider range of community members, giving the wrongdoer an opportunity to interact with and be accountable to a wider cross-section of society (Hoing, Bogaerts & Vogelvang, 2013; Farrington, 2015; Bohmert, Duwe & Hipple, 2016). The wrongdoer (referred to as the Core member) voluntarily requests to participate in the programme, where he receives support and advice from the volunteers (also called Circle members) on reintegration into the community as a law-abiding citizen. By providing the Core member with a group of ‘friends’, they are less likely to experience feelings of rejection and social isolation (Hoing, Bogaerts & Vogelvang, 2013; Farrington, 2015; Bohmert, Duwe & Hipple, 2016). The victim is not required to participate, although Circles can facilitate a meeting with the wrongdoer if requested (Hoing, Bogaerts & Vogelvang, 2013; Farrington, 2015; Bohmert, Duwe & Hipple, 2016).

Regardless of the purpose, participants sit in a circle, symbolising the equal respect for each participant³¹. As in all other restorative practices, offenders must admit guilt and all parties enter into circle meeting voluntarily (United Nations, 2006). Circle meetings consider the needs of the victim, the community and the welfare of the wrongdoer (United Nations, 2006). In addition, there is follow-up to ensure that offenders fulfil the terms of the agreement formed (United Nations

³¹ In COSA, the victim is not part of the regular meetings with the offender and community. However a face-to-face encounter can be arranged during the offender’s reintegration process.

2006). Since stakeholders in the process can include criminal punishment authorities and much emphasis is placed on successful wrongdoer reintegration, circle meetings are more likely to take place during and after the court process (United Nations, 2006).

Overlapping Features

The processes described so far are not an exhaustive listing of all restorative practices. As a flexible process that is often shaped by the cultural and legal contexts it is operating in, there is no one format for developing restorative practices (Ashworth, 2002; Shapland, 2003; Holtermann, 2008). There is some concern that the lack of guidelines can make it difficult to identify restorative processes (Ashworth, 2002; Shapland, 2003; Sullivan & Tifft, 2008; Holtermann, 2008). While there is no single restorative process, there are shared characteristics of restorative practices that aim to achieve restoration of victim and community's dignity and respect and wrongdoer accountability (Ashworth, 2002; Morris, 2002; Shapland, 2003; Van Ness, 2005; Wenzel et al, 2008). These are: (i) stakeholder involvement, (ii) honesty and (iii) consensual outcome. In this way, context-specific practices can be created while maintaining its fundamental features.

Stakeholder Involvement

Restorative practices must involve an encounter that is inclusive of victim, wrongdoer and the community (Llewellyn & Howse, 1997; Van Ness, 2000; Shenk, 2001; Carson, 2009; Zehr, 2014). The dialogical process is the driving force of RJ, and the dialogue has to be open to all the offence has affected (Strang et al. 2006; Pranis, 2000; Wenzel et al. 2008). Including all stakeholders in the restorative process demonstrates equal respect for all perspectives. Participants are able to gain an understanding of and demonstrate respect for each other's perspectives about the offence (Daly, 2008). The encounter provides a safe space for all persons to tell their stories and establish connections with other community members that are mutually beneficial. For the victim,

the encounter empowers them by creating the opportunity to gain resolution by having their questions answered and their needs met (Llewellyn & Howse, 1997; Pranis, 2000; Barton, 2000; Shenk, 2001; Achilles & Zehr, 2015; Braithwaite, 2002; Wenzel et al. 2008). For the wrongdoer, bringing all parties together increases his level of accountability (Llewellyn & Howse, 1997; Van Ness, 2000; Tyler, 2006; Carson, 2009). Typically, community members are invited to speak on how the crime has affected the wider community and participate in holding the wrongdoer accountable (Latimer et al. 2005; Umbreit, Coates & Vos, 2007; Rodriguez, 2007).

Honesty

It is essential that all parties enter into all restorative processes voluntarily and with the intention of being honest (Llewellyn & Howse, 1997; Latimer, Dowden & Muise, 2001). The voluntary nature of restorative practices expresses a willingness on the part of the wrongdoer to be accountable (Llewellyn & Howse, 1997; Ashworth, 2002; National Commission on RJ, 2009; Zehr, 2014). If participants are not coerced into being part of a process, they are more likely to be honest throughout it.

Offenders must acknowledge their guilt in order to participate in the process (Llewellyn & Howse, 1997; Carson, 2009; Zehr, 2014). This opportunity typically comes by way of a public apology and disclosure to persons affected by the wrongdoing (Van Ness, 2005). A sincere apology symbolises that the wrongdoer has understood the wrongdoing of his behaviour based on the moral values of the society. Often absent in criminal justice systems, this type of apology is typical in restorative proceedings (Strang 2002; Zehr, 2015). Acknowledging his guilt reduces the inclination for the wrongdoer to become defensive of his actions (Llewellyn & Howse, 1997; Barton, 2000; Zehr, 2014). Also, when an offender volunteers to participate in a process that requires acknowledgement

of guilt and facing unknown consequences, it indicates a sincere willingness to change (Wenzel et al. 2008).

This emphasis on honesty contributes to the empowerment of all participants. The voluntary nature of RJ allows victims to choose how they would like to resolve the offence (Barton, 2000). This is unlike the court system, where there is relatively little choice in how the proceedings play out or their level of involvement.

Consensual Outcome

All restorative processes are expected to have an outcome that is agreed upon by all parties and monitored to ensure compliance (Llewellyn & Howse, 1997; Shenk, 2001; Braithwaite, 2004; Umbreit, Coates & Vos, 2007). The outcome describes the ways in which the wrongdoer will make amends for his actions. This form of restitution makes considerable demands on the wrongdoer. Not only is he required to admit publicly that he was wrong, but is obligated to ensure that the victim is compensated (Van Ness, 2005; Zehr, 2015). This compensation can take the form of financial restitution, replacement of property or some other arrangement that is mutually agreed upon. For instance, in New Zealand, *the Children, Young Persons and their Families Act* of 1989 requires offenders to make apologies, pay restitution and engage in community service. In Vermont, reparative boards are charged with ensuring that all low-risk offenders undergo drug and alcohol treatment in addition to making financial payments to the victim. All parties must work together. Community members are typically mandated to work with probation officers to the responsibility of working with the wrongdoer or monitoring his fulfilment of the agreement. In Circles of Support and Accountability, volunteers from the community work with probation officers to regularly update them on any changes to the wrongdoer's behaviour.

The inclusion of the all stakeholders is supposed to produce a just and balanced outcome. The victim should not use the process for revenge, since the outcome, will enable the return of the wrongdoer to society. Therefore, these outcomes would exclude corporal punishment or other treatment that would violate the fundamental rights of any participant. Similarly, it is unlikely that the offender would use the restorative process to avoid being accountable since a restorative outcome ensures that he takes an active role in deciding how to make amends to the victim and the wider community. In addition, pre-meetings should filter out those who wish to manipulate this more informal approach and refer them to the formal court system.

Once the agreement resulting from the restorative process is in place, due process requires some sort of mechanism to guarantee that it is upheld. As mentioned, community members can become responsible for monitoring these agreements (Braithwaite, 2004; Umbreit, Coates & Vos, 2007). This type of supervision is likely to bring about increased compliance, since the supervisor of the agreement is connected to the wrongdoer and invested in seeing the outcome come to fruition. A study by Schneider (2000) found that offenders who completed restitution and community service felt an increased level of commitment and feelings of citizenship (as cited in Braithwaite, 2002). Therefore the restorative process may reduce feelings of alienation or bitterness toward the community, thereby reducing the potential for reoffending. Currently, over 100 countries use some form of restorative practice to address crime (Van Ness, 2005; <http://restorativejustice.org/world-map/#sthash.KHiyNYBc.dpbs>, accessed May 30, 2018). All forms of RJ, ranging from conferences to circles can be seen across jurisdictions to address a variety of crimes, including petty theft to sexual assault and rape (See Table 1.0).

Table 1.0 Focus of literature on RJ according to Region³²

Region	Purpose of RJ	Main types of RJ discussed	Sample Countries
Africa	1. Response to genocide/HR violations 2. Overcrowding/Case backlog	Truth Reconciliation Commission, Conferencing	South Africa, Rwanda,
Asia	1. Peacemaking and reconciliation between divided communities 2. Justice Reform	Conferencing, Circles,	
Europe	1. Juvenile Justice 2. Justice Reform	Conferencing, VOM	Belgium, England, Ireland
Middle East	1. Conflict Resolution 2. Juvenile Justice	Conferencing, VOM	
Latin America	1. Improving State legitimacy 2. Crime reduction 3. Justice reform	Conferencing, VOM	
North America & the Caribbean	1. Justice Reform 2. Juvenile Justice	Conferencing, Circles, VOM	United States, Canada

³² This table is compiled based on information from a range of sources; <http://restorativejustice.org/world-map/#sthash.cHeJWtjV1fL4T3C7.dpbs>; Gavrieldies, 2007; National Commission on RJ, 2008; Vroomen, 2014; Hunter, 2015; Bolitho & Freeman, 2016). However it is not considered by exhaustive and is intended to show the main focus of the literature regarding the range of practices used to respond to a variety of justice-related needs across jurisdictions.

Pacific	Justice Reform	Family Conferencing,	New Zealand, Australia
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Most countries implement restorative processes for juvenile offences (United Nations, 2002; Hunter, 2007; Barnes et al. 2013)³³, ranging from theft and vandalism to sexual assault and homicide. However the type of crime addressed by RJ varies across countries (Liebmann, 2007). For instance, Finland uses RJ for a range of minor juvenile offences such as vandalism and theft as well as violent crimes such as assault. They exclude offences related to child sexual abuse and on-going violence, while Canadian provinces, such as British Columbia, embrace RJ as a means of handling adolescent sexual offences and family violence (Bolivar, 2009; Barnes et al. 2013). In addition, many countries expand their application of RJ to adult offences, including less serious crimes from drunken driving and drug offences to more serious offences including rape, manslaughter and murder (Liebmann, 2007; Hunter, 2007; Barnes, 2013). In general, there seems to be a preference for the use of processes that allow for face-to-face encounters and some indication that RJ can be effective for a range of crimes, including serious violent ones such as murder, assault and rape (Hudson, 2002; Von Hirsch et al. 2003; Edwards & Sharpe, 2004; Sullivan & Tifft, 2008; Koss, 2012; Brooks, 2015)³⁴. However, conferences seem to be a more popular option for violent crimes, research indicates that recidivism results are greatest for VOM³⁵

³³ In the following chapter, where I discuss the policymaking process of RJ in Jamaica, I will highlight the failure of the Jamaican government to follow best practice by implementing RJ for adult offences, before attempting to assess its success through its application to juvenile offences.

³⁴ Maxwell, Morris & Hayes (2008) state that research has shown a consistent preference for restorative conferences because they provide an increased level of involvement for victims. In addition, conferencing has a reputation for careful planning, stakeholder consultation and careful selection of community participants (Edwards & Sharpe, 2004). For instance, studies from Australia and New Zealand, where victims are allowed to be present, demonstrate high attendance rates (Maxwell, Morris & Hayes, 2008).

³⁵ Participants of VOM tend to recidivate less, and when they do, it is for less serious offences (Umbreit, Coates & Vos, 2007).

Typically, restorative practices are adapted to meet the needs and context of the jurisdiction in which it operates. The literature highlights the wide range of practices that are used across jurisdictions to respond to a number of justice-related issues. New Zealand and Australia incorporated RJ processes into their formal justice system as a way of responding to the disproportionate imprisonment of aboriginal youth (Gavrieldies, 2007; Vroomen, 2014). For these countries, juvenile justice family group conferencing was preferred; it allows the family to play an integral role in the reform of the wrongdoer. On the other hand, Northern Ireland has expanded restorative conferences to an array of juvenile and adult offences (Hunter, 2015). Similarly, many countries from Europe, such as Belgium, Scotland and the UK began to utilise VOM and conferencing to reform their youth justice system (some later expanded to adult justice) (Vroomen, 2014; National Commission on RJ, 2008). On the other hand, the United States And Canada began using grassroots organisations to deliver a range of RJ practices (VOM, Conferencing, Circles, COSA) for a number of crimes, including sexual violence (Bolitho & Freeman, 2016).

Many of these countries adapt RJ practices to fit the contextual needs of the country (Daly, 2002; Van Ness, 2005; Wenzel et al. 2008; Wallace, Wylie & Gordon, 2013). In Canada, RJ has developed largely from the culture of indigenous communities. Where applicable, circle conferencing is introduced, which combines the more structured aspects of conferencing, while arranging the participants in a circle; one of the First Nation's cultural practices (Barnes, 2013). Similarly, New Zealand has developed the 'Wagga Wagga' conferencing model, which is inspired by restorative-oriented indigenous practices (Barnes, 2013). In Ireland, due to the grave nature of some of the crimes such as attempted murder, rape and grievous bodily harm, as well as offenders that suffer from mental illness, the Probation Board allows restorative conferences that do not require face-to-face meetings between victim and wrongdoer. In addition, many conferences take place post incarceration for prisoners that have a sentence that exceeds 6 months (Hunter, 2007). In

New Zealand, where the focus is on achieving justice for aboriginal youth, it is not surprising that their RJ practices are rooted in Maori traditions (Gavrieldies, 2007).

Also, the level and type of state involvement in RJ³⁶ affects the way in which RJ is used in different jurisdictions. Where states do recognise RJ, restorative processes is typically used at various stages in the justice process (Van Ness, 2005). There are 4 main points in the criminal prosecution process at which restorative practices are used. These are: (i) pre-charge, (ii) prosecution level, (iii) sentencing, and (iv) corrections (as an alternative to, during or after prison) (Daly, 2002; United Nations, 2006). Some justice systems that have integrated RJ completely use restorative processes at all four stages. Countries such as New Zealand and Canada have formally recognised and incorporated RJ into their justice systems. In Australia, RJ is incorporated into all stages of the criminal system, where restorative processes run alongside formal justice processes (Larsen, 2014). These states are likely to use RJ to reduce the burden on the courts, but also because of their belief in RJ to reduce recidivism and create a shift in the approach to justice as a whole. The Canadian Dispute Resolution Unit, run by the Correctional Services have a range of RJ programmes, allows RJ pre-charge, post-charge, pre-sentencing and post-sentencing (Canadian Resource Centre for Victims, 2011). Similarly, Wagga Wagga (Australia) uses RJ to divert offenders from the court by offering it post-charge. They also offer it pre and post-sentencing and post-release as a means of reducing the likelihood of reoffending (Larsen, 2014). On the other hand in the UK, where the state has not incorporated RJ completely, offenders are only eligible to participate in RJ post-sentencing, signalling loyalty to the view of harsh punishment as a deterrent (Gavrieldies & Loseby, 2014). In Thailand, RJ is run as an adjunct to the formal system and is only employed pre-sentencing (Boriboonthana & Sangbuangalum, 2013).

³⁶ Later on in this thesis, I will elaborate on the relationship between RJ and the state within the framework of legal pluralism. I propose that RJ is most effective when it is driven by the community, but supported and supervised by the state.

Some states do not recognise RJ, have not incorporated it formally or see it as an alternative to the justice system. In these cases, organisations are free to use RJ for a range of crimes at different points in the justice process. In the UK, community organisations run a vast majority of RJ programmes under the supervision of state entities (Gavrieldies & Loseby, 2014). In Thailand, the state runs RJ programmes through probation services only (Boriboonthana & Sangbuangalum, 2013). Also, the Sycamore Tree programme is run independently across 27 countries. States such as Costa Rica, Fiji and Cayman Islands (where RJ is not a formal part of the justice system) contract this programme to be run during an wrongdoer's imprisonment (Liebmann, 2010; World Map, 2018; [Restorative Justice, 2018](#)). On the other hand, the RESTORE programme began in Ohio through a faith-based agency, works in adult male prisons pre-release in order to increase empathy for victims (Liebmann, 2010)³⁷. The literature has also identified a number of countries across Africa, North America and the Pacific that utilise indigenous restorative practices without the support of the state (World Map, 2018).

Certainly, there is a wealth of discussion of RJ policy within developing jurisdictions (Lemley, 2001; Skelton, 2002; Muncie, 2005; Liebmann, 2007; Menkel-Meadow, 2007; Skelton & Batley, 2008; Clark, 2012; Clamp, 2013; Johnstone, 2013). However, the literature does not give significant attention to the connections between the policymaking process and the effectiveness of RJ itself (Newburn & Crawford, 2002; Skelton, 2002; Frederikson, 2005; Molina & Alberola, 2005; Brooks, 2012; 2013; Silva, 2015). There is limited examination of the policymaking process of RJ within the developing contexts (Earle, Newburn & Crawford, 2002; Muncie, 2005; Wemmers, 2005; Molina & Aberola, 2005; Oduro & Nagy, 2014; MacFarlane & Canton, 2014; McAlinden &

³⁷As will be discussed, the Dispute Resolution Foundation (DRF) in Jamaica uses a variety of practices to handle a range of crimes without involvement from the justice system altogether, while the MOJ employs restorative conferences pre-charge, post-charge and post-sentencing in order to meet their aims of reducing the burden on the court as well as reducing recidivism mostly non-violent crimes.

Dwyer, 2015; Clamp, 2016). Any focus on specific aspects of RJ or mention general restorative ideals. For instance, Earle, Newburn & Crawford (2002) focus on the implementation of referral orders³⁸, which is a restorative-oriented practice. In this thesis, I argue that the failure to consider local context and lack of collaboration throughout the policymaking process resulted in the implementation of a RJ policy that did not meet its objectives or make use of resources effectively.

Also, there is limited discussion of RJ in Jamaica and other Caribbean countries. The regional literature focuses on RJ in North American focuses on the United States and Canada (particular given the long standing history of RJ in Canada and its roots in Aboriginal community practices). The limited literature on RJ in the Caribbean focuses on the potential of RJ to reform the justice system and reduce crime (Wachtel, 2005; Llewellyn, 2008; Williams, 2009; Taylor, Chauhan, Fondacaro, 2012; Wallace, Wylie & Gordon, 2013; Ali 2015). There is no literature that assesses the effectiveness of RJ policy or policy transfer of RJ in the Caribbean. This thesis seeks to introduce this discussion of RJ policymaking to the region.

Conclusion

I have provided an overview of the various discussions taking place within policy transfer, justice policy and RJ literature across a range of jurisdictions as well as in Jamaica and the Caribbean. In doing so, I have noted the gaps that this thesis aims to fill. I will now go on to discuss the methodology that this research employed.

³⁸ A referral order is a formal request to participate in a youth offender panel. It is part of restorative practices for juvenile offenders that aim to bring the offender, community and victim together to resolve the crime collectively.

Chapter 2: Methodology

This research concerns the transfer of RJ policy in Kingston, Jamaica between 2002 and 2015. It seeks to respond to questions regarding the reality of policy transfer within a post-colonial, pluralist, developing jurisdiction that has limited experience in justice reform and how this can be improved upon. In accordance with the Dolowitz and Marsh framework, this research covers the origins of policy transfer, what was transferred, the factors that influence the policy transfer, and the effect that all of these considerations have on the success of the RJ programme.

The first section of this chapter discusses the value of qualitative research. The second section will provide rationale for the case study as part of this qualitative approach to data collection; and an in-depth description of the research strategy, which involves triangulation of the various data and key elements identified throughout. The final section will reflect on issues of validity and transferability, ethical concerns as well as the limitations of the research generally.

Introduction to Research Methods

I utilised a qualitative research design with the aim of providing a context-specific, detailed, thick description of the process of transferring RJ policy in Jamaica. As a result, I was able to highlight the factors that affected this policymaking process and decipher which of them are consistent with or vary from those identified within the regional and international literature. Also, by identifying these influencing factors and its effect on policy success in Jamaica, I was able to discuss how this process might be improved upon.

Through qualitative information, researchers can provide an in-depth assessment of real-world events and the effect that context or setting has on those events and persons involved (Silverman, 2000; Sallee & Flood, 2012). Qualitative research on RJ policy is similarly beneficial in that it can provide information on choices made throughout the policy-making process and describe

how this process affects the success of the programme. A quantitative analysis of the relevant statistics on crime prior to and after the implementation of RJ would not reveal such details. This is important given the lack of pre-existing information on policy transfer and the various factors that policymakers must contend with in Jamaica.

My work here relies on a range of qualitative data collection methods, including interviews, focus groups, questionnaires and observations. Conducting interviews allowed me to discriminate between goals stated in the RJ policy documents and what was being achieved in practice. I used interviews to demonstrate the lack of awareness of key stakeholders of the policymaking process. My interviews with civil society leaders and members of the judiciary demonstrated the lack of awareness of RJ, despite their stated inclusion in the programme. In addition, it demonstrated the importance of sensitisation. The failure of the Jamaican government to provide information on the contributing factors of crime, such as poverty meant that the key stakeholders, who held uninformed stereotypes of offenders and certain crimes, influenced their perception of RJ negatively. Some open-ended questions were used to obtain detailed information such as how would they want RJ to look like in practice in order to fit the needs of the Jamaican society, and how RJ applies to more heinous crimes, such as sexual violence.

Case Study Approach

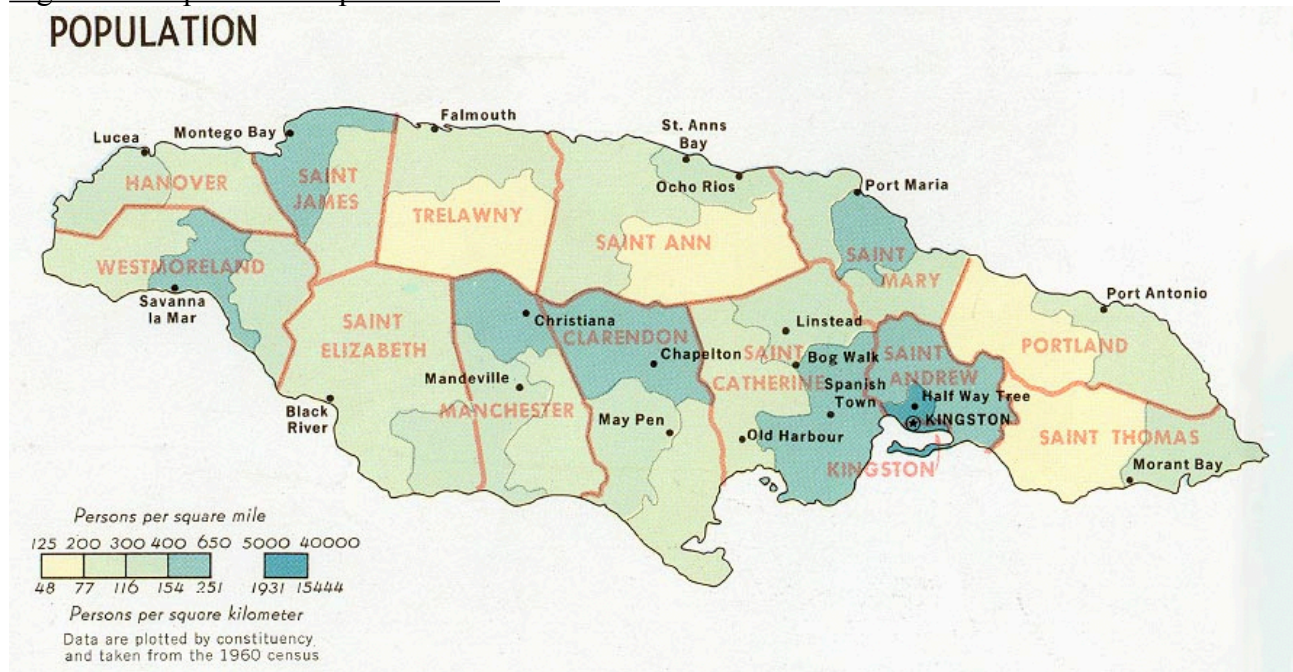
Case studies are used widely across the social sciences (Kohlbacher, 2006). A case study can be defined as ‘an intensive description and analysis of a phenomenon or social unit’ (Merriam, 2002), and is usually bound by time and place (Creswell, 1998). It has also been shown that case studies often situate the case in its natural setting (Creswell, 1998), and can allow researchers to maintain the relevant characteristics of real-life events (Yin, 2014; Kohlbacher, 2006). Using the case study approach allowed for the close examination of the political, economic and social

conditions present in Jamaica that affect policymaking. In addition, I examined these factors during a specific period; where the Jamaican government was making its first attempt to reform the entire justice system; another context-specific issue that might have affected the policymaking process. By focusing on RJ, I was able to garner information about the influence of these conditions on penal policymaking specifically. This level of specificity has wider implications in determining the similarities and differences in penal policymaking versus other forms of policy as well as making inferences about other pluralist, British post-colonial jurisdictions that engage in policy transfer that may have similarities. A country that has limited experience in justice reform, suffers from a paucity of resources and public distrust of the state might learn valuable lessons from the Jamaican context. The choice of a case study enables researchers to engage with a wide variety of data, including interviews, documents and observations (Kohlbacher, 2006). The variety of empirical data and perspectives also adds depth to the analysis (Glowka, 2011; Denzin, 2012). My case study focuses on the events that occurred during the effort to develop and implement a national RJ policy in Jamaica between 2002 and 2015, more specifically in the city of Kingston, which I chose as the main research site because it enabled access to persons that were directly involved with the RJ programme (Marshall and Rossman, 2016).

Jamaica has a population of around 3 million (http://statinja.gov.jm/Demo_SocialStats/population.aspx, Accessed, October 12, 2017) and the island is made up of 14 parishes (see Figure 2.0). Much of the population (666,041) resides in the capital, Kingston that is located on the south-eastern end of the island (http://statinja.gov.jm/Demo_SocialStats/populationbyparish.aspx, accessed October, 2017). Within Kingston and St. Andrew, many residential areas are separated in accordance with the class stratification of the population. A large portion of the population of

Kingston and St. Andrew reside in the downtown area, also referred to as the Kingston Metropolitan Area (KMA)³⁹ (See Figure 2.1).

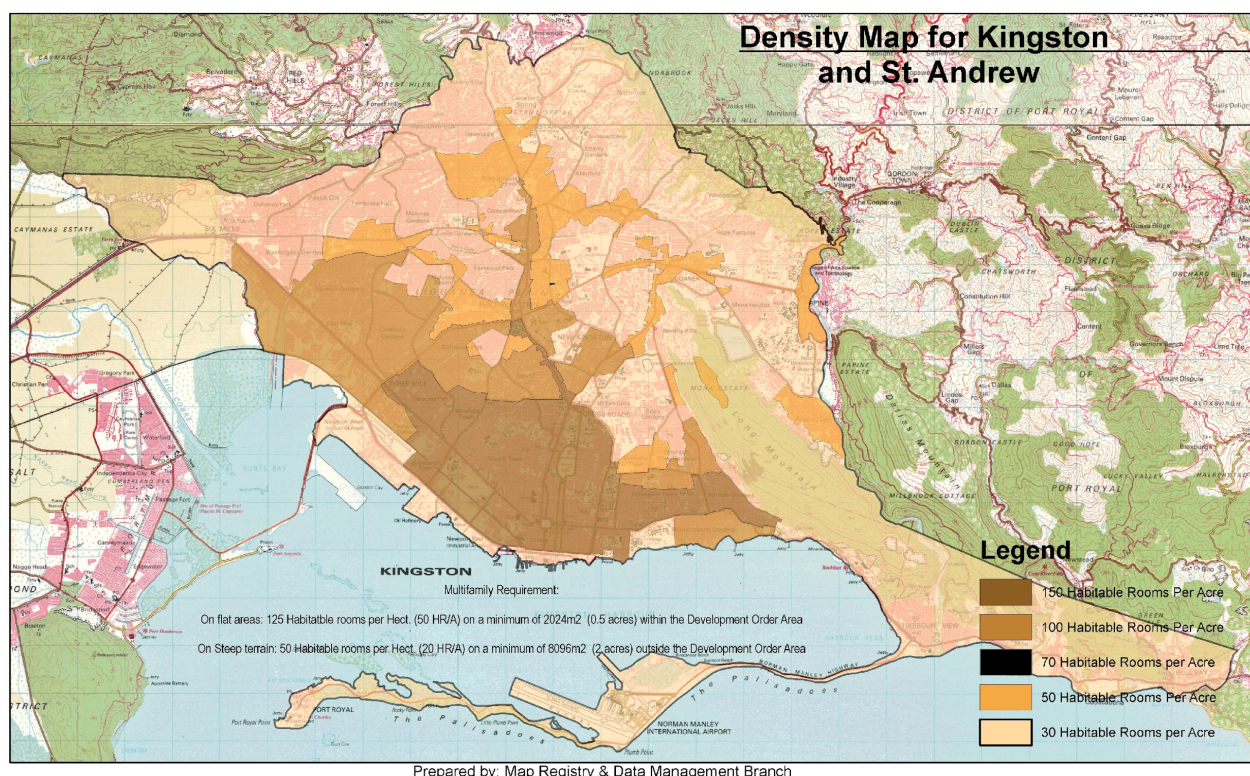
Figure 2.0 Population Map of Jamaica



Accessed: Retrieved from http://www.zonu.com/jamaica_maps/Jamaica_Population_Map_2.htm, accessed, March 1, 2016.

³⁹ KMA is one part of the KMR, which includes Spanish Town and Portmore

Figure 2.1. Map of Kingston Metropolitan Region, showing the population density of the Kingston Metropolitan Area

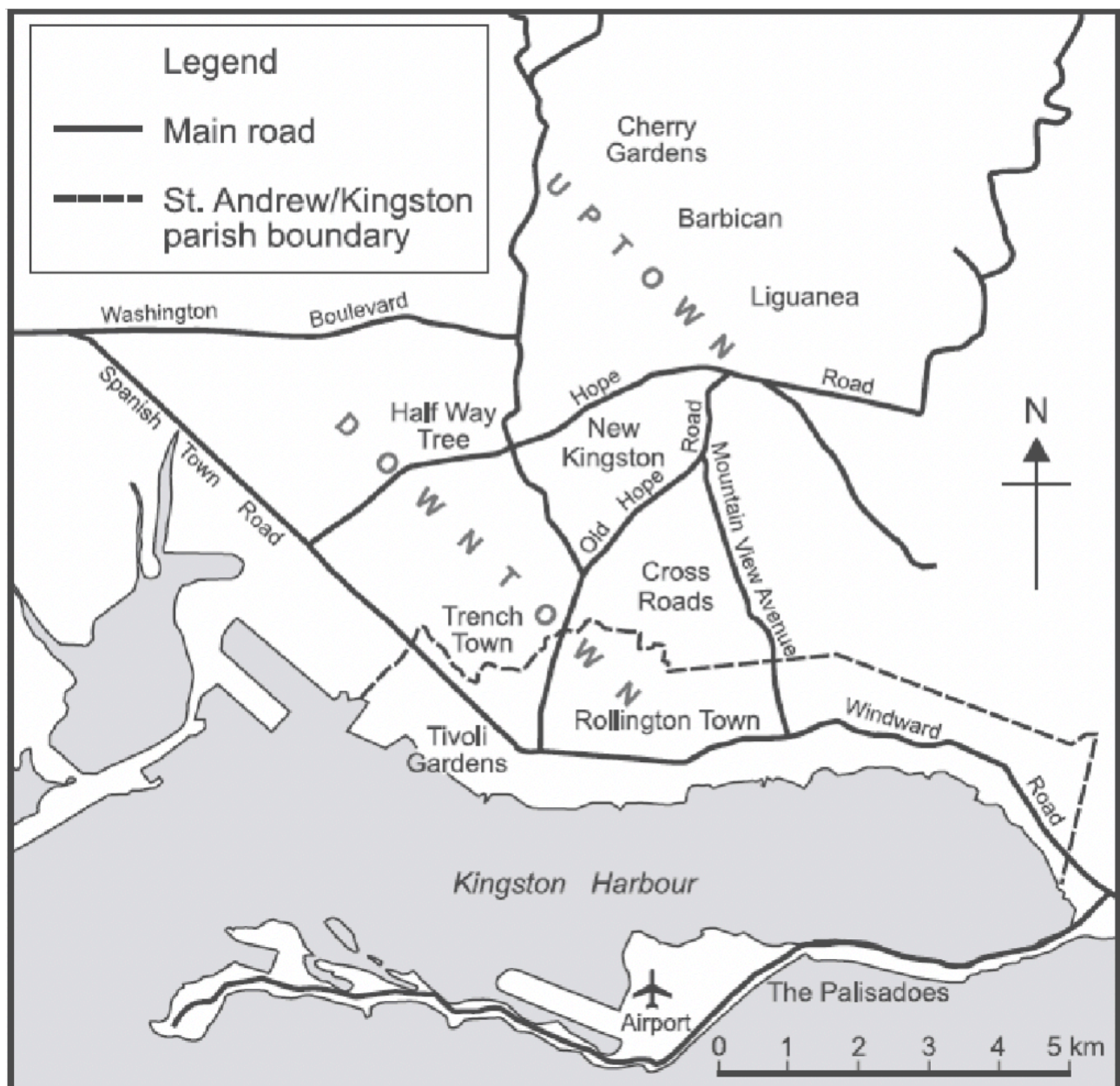


Retrieved from the National Environment and Planning Agency, <http://www.nepa.gov.jm/centre/maps.asp>. Accessed May 22, 2016

According to the 2011 census by the Statistical Institute of Jamaica, KMA represents 88% of the population of the parish of Kingston & St. Andrew (Clarke, 2006; <http://statinja.gov.jm/pressreleases/pressreleasecensus.aspx>, accessed May, 2016). As will be discussed, much of the population within the southern and western parts of KMA (referred to as downtown) suffers from poverty, unemployment and subsequently crime (Headley, 1996; Henry-Lee, 2005; Clarke, 2006). This is in contrast to the eastern and northern sections of Kingston and St. Andrew (referred to as uptown), where the wealthier classes live in relatively crime free areas⁴⁰ (Robotham; 2003; Jaffe, 2012; Carnegie, 2014) (See Figure 2.2).

⁴⁰ Over time, some small segments of the low-income population have infiltrated ‘uptown’ areas of Kingston by occupying less desirable spaces such as gullies and water courses (Carnegie, 2014, p65).

Figure 2.2 Map of Kingston Metropolitan Area showing uptown/downtown divide



(Accessed from Jaffe, 2012)

Within the KMA, there are a large number of inner-city communities, referred to as “garrisons,” where crime and violence are concentrated (see Figure 2.3). Harriott (as cited in Lewis, 2012) states that 20% of all constituencies⁴¹ and approximately 60% of all urban constituencies are

⁴¹ A constituency refers to a group of voters within a certain geographical area that elect a political representative.

‘garrisoned’. Within these garrisons, politicians from the two major political parties develop relationships with community leaders, referred to as ‘dons.’ Dons deliver the votes of citizens in garrisons by the threat or actual use of violence against community members. The political allegiance coordinated by ‘dons’ and politicians has contributed to the increasing murder rates in Kingston (Gray, 2007; Bourne et al. 2012). By using violence to garner political support, political parties have created a culture within these garrisons where violence and murder were legitimised for the purposes of maintaining political power. Groups from opposing parties and hence communities, engage in violence in order to diminish the stronghold that the opposition may have over a particular community. Between 2001 and 2005, politics was cited as the one of 3 main sources of motivation for over 40% of murders in Kingston (Gray, 2007)⁴².

All national government administration takes place in the capital Kingston. The House of Parliament, where policy is considered for legislation, is situated in downtown Kingston; and 11 of the 24 courts in Jamaica can be found in the city (see Figure 2.4). The Ministry of Justice (MOJ) and its sub-organizations responsible for the RJ programme and policy are also located in Kingston, as is the head of the National RJ Unit at the Justice Training Institute (JTI). However, only 1 of the 7 RJ centres, Tower Hill, is located in Kingston⁴³ (see Figure 2.4). Upon discussion with personnel from Tower Hill centre, I was informed that they accepted the most referrals for restorative practices due to the political tensions between garrisons in Kingston.

⁴²The other two sources of motivation were rape and reprisals, which may be related indirectly to political issues (Gray, 2007).

⁴³ The RJ centre located in Montego Bay is currently not operational. It is located in a shopping centre.

Chart 2.0 Distribution of Murder by Parish in Jamaica in 2013

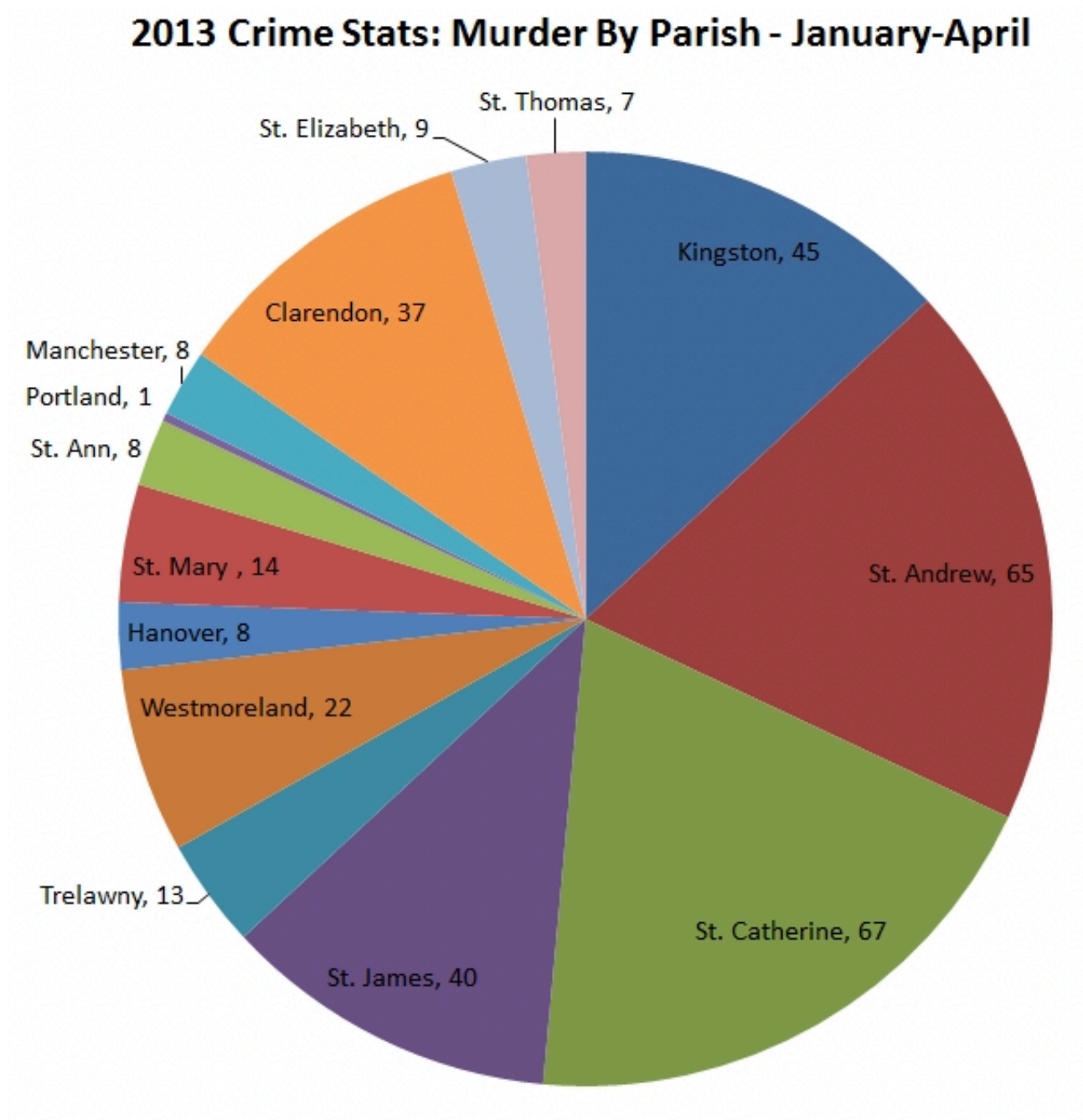


Figure 2.3 Map of RJ Centre locations in Jamaica

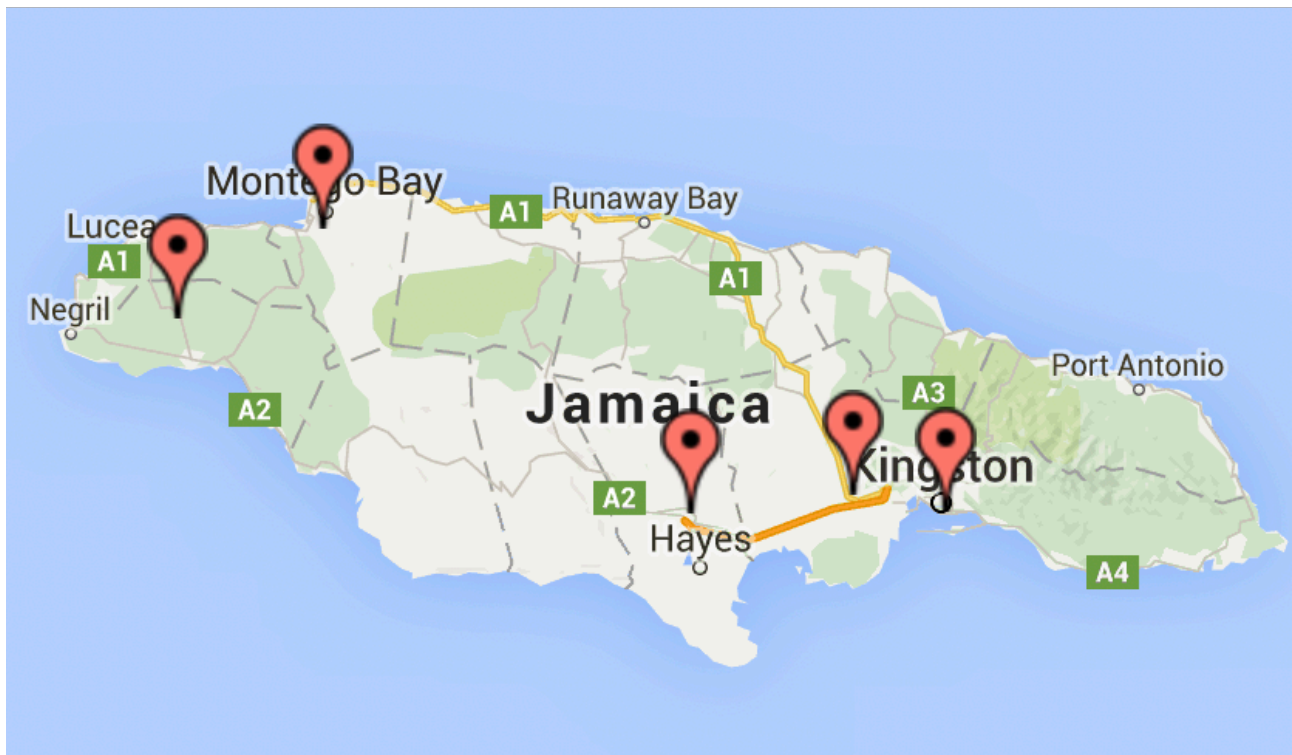
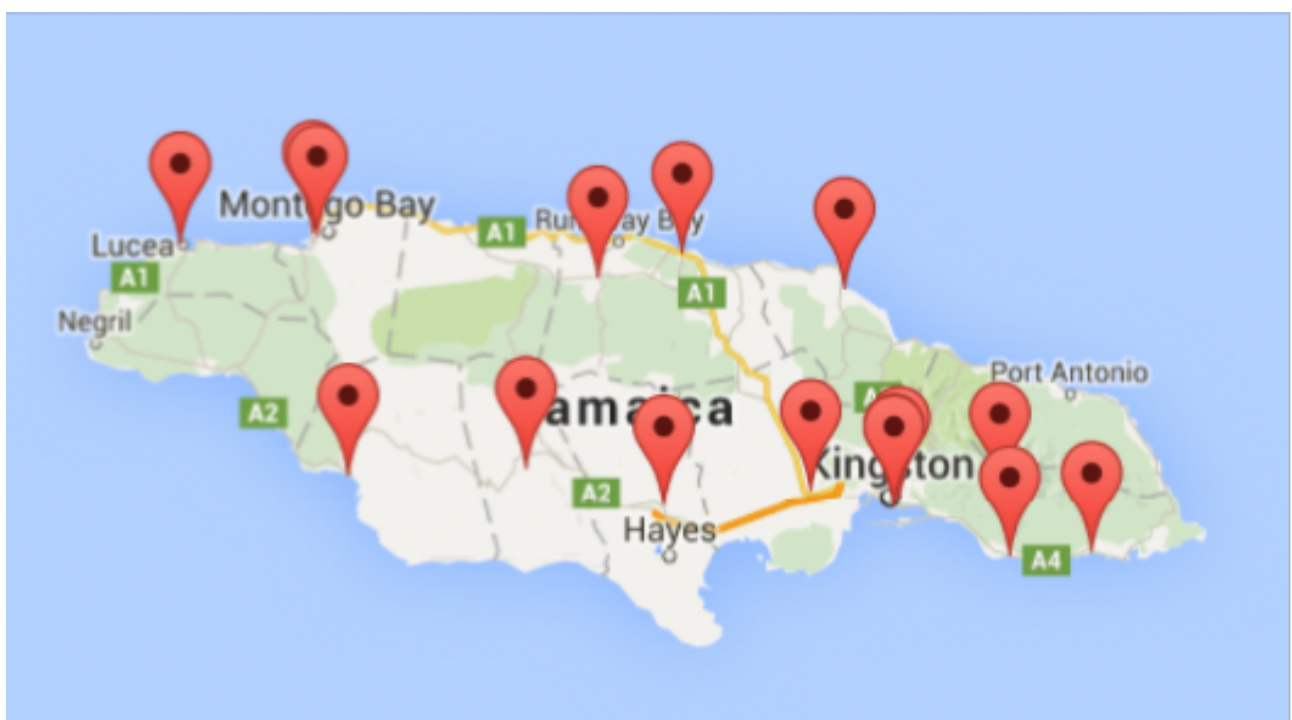


Figure 2.4: Map of Law Court locations in Jamaica



Data Collection

I utilised a number of research tools to collect data during September 2014 and March 2015.

I now discuss these tools and the value of triangulating the data collected. Then, I will review the

quality of the research in terms of validity and generalisability as well as the limitations of the research and ethical considerations that was accounted for so as to minimise any potential risk to the participants and myself in the final section.

Interviews

I conducted 29 in-depth semi-structured elite interviews with a range of individuals (See Table 2.0)⁴⁴. These individuals were predominantly from the following groups: (i) CSOs who utilise RJ or work with inner-city communities, (ii) members of the legal fraternity and judiciary, (iii) political representatives from the MOJ, (iv) academics, and (v) those mandated with the development of the National RJ policy.

Table 2.0 List of interviewees

	Name	Position	Date	Location
1	Michael Gordon	Asst. Lecturer at University of the West Indies: RJ facilitator	11/27/2014	Eastwood Park Road Kingston,
2	Dr. Bernard Headley	Professor at University of the West Indies: criminology; RJ facilitator	11/27/2014	Eastwood Park Road, Kingston
3	Mark Golding	Attorney; Minister of Justice	11/18/2014	MOJ Offices, Oxford Road, Kingston
4	Justice Patrick Brookes	Court of Appeal Judge; former attorney	11/10/2014	Personal Residence, Hope Pastures, Kingston
5	Dr. Lloyd Barnett, Q.C	Attorney; Director of IJCHR; Expertise in constitutional reform and HR law	11/12/2014	In Chambers, Duke Street, Kingston

⁴⁴ George* asked to remain anonymous at the beginning of the interview. He was the only interviewee that requested anonymity.

6	Justice Marva McIntosh	Retired Supreme Court Judge; Specialist Legal Consultant for Department of Public Prosecutions	11/28/2014	Office of the Department of Public Prosecution, Downtown Kingston
7	Judith Wedderburn	Director of Friedrich Ebert Stiftung (FES)- women's rights	10/10/2014	FES Offices, Merrick Avenue, Kingston 10
8	Paul Hines	CEO of Dispute Resolution Foundation (DRF)	07/11/2014	DRF Offices, 5 Camp Road, Kingston
9	Nancy Anderson	Attorney; Secretary of ICHR	1/12/2014	Norman Manley Law School, University of the West Indies, Kingston
10	Dorothy Lightbourne	Former Attorney General and Minister of Justice; Attorney	20/02/2015	In Chambers, Downtown Kingston
11	Dr. Clayton Sewell	Head of Ward 21 (Mental Health Facility at the University of West Indies Hospital); Only forensic Psychiatrist in Jamaica contracted by Department of Corrections	01/09/2014	Mental Health Facility, University of the West Indies, Kingston
12	Mr. Roydon Hall	Acting Director, RJ Unit at the National Justice Training Institute; Centre Manager at Tower Hill Restorative Centre; panellist at RJ international conference	28/11/2014	RJU Offices, Camp Road, Kingston
13	Dr. Oo	CEO of Bellevue Mental Hospital; Clinical Psychiatrist contracted by Department of Corrections	01/08/2015	Bellevue Mental Hospital, Windward Road, Kingston

14	Carla Maria Gulotta	Director of Stand Up for Jamaica (Offender's Rights Group), Panellist at RJ International Conference	20/1/2015	Stand up for Jamaica Offices, Tower Street, Downtown Kingston
15	Rachel Morrison	HIV programme manager, UNDP	21/12/2014	UNDP Offices
16	Dr. Ramona Biholar	Lecturer at Faculty of Law at UWI; dissertation on the efforts of Jamaica to change cultural and social norms to fit with the mandate of CEDAW, with a particular focus on Article 5.	22/1/2015	Norman Manley Law School, University of the West Indies, Kingston
17	Donna Parchment-Brown	Director of Justice Reform Implementation Unit (JRIU); former CEO of Dispute Resolution Foundation (DRF) and Peace Management Initiative (PMI); former Political Ombudsman; former Custos of St. Andrew; former Legal Representative of the Maroons.	3/02/2015	MOJ, Oxford Street, Kingston
18	Ruth Carey	Former Policy Consultant to the MOJ on the RJ Programme; CEO of independent RJ centre	N/A	Declined
19	Dr. Jermaine McCalpin	Associate Director of the Centre for Caribbean Thought and lecturer of Transitional Justice, University of the West Indies; Lecturer; Panellist at RJ International Conference	03/03/2015	Telephone Meeting (UK & United States)
20	Hermoine McKenzie	Director of AWOJA; Professor at University of the West Indies	16/02/2015	AWOJA offices, Ellesmere Road

21	Audrey Barrett	National Technical Advisor (NTA) of RJ programme	10/01/2015	Skype Meeting (Jamaica and Canada)
22	Jennifer Llewellyn	Consultant of RJ programme; Lecturer at Dalhousie University	10/02/2015	Skype Meeting (Jamaica and Canada)
23	Damian Hutchinson	Director, Peace Management Initiative	26/02/2015	PMI Offices, Melmac Avenue, Kingston
24	Lisa Palmer-Hamilton	Deputy of Director of Public Prosecutions; attorney	25/02/2015	Office of the DPP, Downtown Kingston
25	Carol Palmer	Permanent Secretary of MOJ	10/01/2015	Ministry of National Justice, Oxford Street, Kingston
26	Leon Dundas	Senior Trainer/Mediator at Dispute Resolution Foundation; Consultant at MOJ	20/04/2015	Café, Leicester, United Kingdom
27	Dr. Barbara Toews	Consultant of DRF; Mentee of Professor Howard Zehr	06/11/2014	Skype Meeting (Jamaica and Canada)
28	George	Standup for Jamaica Director; RJ facilitator	20/1/2015	Stand up for Jamaica offices, Tower Street Kingston
29	Dr Damion Blake	Assistant Professor of Political Science and Policy Studies, Elon University; Consultant at MNS	05/04/2016	Skype (UK and Jamaica)
30	Vuraldo Barnett	RJ Centre Manager, Trench Town RJ centre	Declined	Declined

Interviews are a useful research tool because they provide insight into events that we would ordinarily know little about and they provide more detail about the nuances of political processes and the manoeuvrings between influential actors (Lilleker, 2003). These chosen interviewees

represent the ‘gatekeepers’ of knowledge, since they are either directly involved or have had some interaction with the policy transfer of RJ in Jamaica (Rossman & Rallis, 2003). As a result, they were able to provide detailed information regarding the development and implementation of the RJ policy and the advantages gained from and obstacles faced. Two forms of sampling were used to select participants. Initially, I used purposeful sampling which involved selecting particular cases based on a specific purpose instead of at random (Teddie & Yu, 2007). Of the 29 interviewees, 19 were chosen because of their role in the development of the policy or their association with justice-related issues, such as my request for an interview with the Minister of Justice, Mark Golding, because of his consistent support for RJ in Jamaica. I was able to interview 10 other persons through snowball sampling⁴⁵, which occurs when an interviewee recommends other individuals who may shed further details on the issues being discussed. During my interview with Minister Golding, (MOJ Offices, 18/11/14) he recommended Permanent Secretary (PS) Carol Palmer (MOJ Offices, 10/1/15) to be interviewed, who had a vested interest in RJ and was heavily involved in the development and implementation of the policy.

I sought access to all interviewees by sending out formal interview requests via email and post. I followed up these formal requests with telephone calls. Most participants welcomed the opportunity to participate in the interviews. Only 3 persons declined interviews. With the consent of the participants, the interviews were audio-recorded and ranged in duration between 40 minutes and 2 hours and 30 minutes. All but 3 interviews took place in person in Jamaica, since these persons were no longer based in Jamaica. These three interviews were done via Skype and telephone. While all interviews were conducted in English, t patois (Jamaican dialect) was also used extensively.

⁴⁵Also, I embraced both internal and external sampling. External sampling is understood as interviewees chosen who are outside of the focal point of research, but still has a wealth of knowledge of it (Mickey, 2012). For instance, I interviewed Hermoine McKenzie, Director of AWOJA because of her work in civil society, but also because, as a professor, she had supervised a number of dissertations on RJ. Despite her lack of direct involvement in the development of policy, she was able to provide an informed outside perspective on the potential of RJ in Jamaica.

Questionnaires

A questionnaire is defined as a list of questions that are sent out to individuals to gather information about their opinions (Williams, 2003; Grix, 2004), and is a quick, cost-effective way of collecting large amounts of data (Harpham et al, 2003; Wright, 2006). For this research, 206 online questionnaires were randomly distributed to Jamaican citizens over 18 years of age residing in Kingston using Google Docs, which allowed me to monitor responses more effectively.

These questionnaires did not seek to ascertain public opinion on RJ. Rather it sought to demonstrate the type of detailed, contextual information that the Jamaican government could have garnered had they engaged with the public in a collaborative manner. Later on in the thesis, I describe the tokenistic nature of public consultation as part of the policymaking process. Both the questionnaire and the focus groups in this research (which the government used in their own public consultations) sought to exhibit the potential effectiveness of the tools that were used in the consultation process. For instance I asked participants about the use of RJ for sexual offences⁴⁶.

The answers are not representative of a cross-section of the Jamaican public. Rather the responses are representative of the type of information that could have been collected and the usefulness of those responses in developing a context-specific form of RJ.

In demonstrating the most effective use of a questionnaire and its capacity to capture how Jamaicans envisage RJ, many of the questions provided a range of answers to choose from or were open-ended to allow participants to express themselves in detail. In addition, a short written

⁴⁶ I focus on sexual offences as crimes that have been increasing, but left largely unaddressed by the justice system. Since 2009, there has been a decrease in violent crimes, but a consistent increase in sexual offences (20.5%) (Harriott & Jones, 2016). Of the 347 rapes reported to the Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA) in 2013, only 137 resulted in arrests (Harriott & Jones, 2016). While RJ is largely accepted as a 'soft approach to crime' that can handle minor disputes, I propose that RJ is actually punitive in nature and should be able to address a range of crimes in terms of severity.

description was provided that explained the content of the questionnaire and its purpose due to the sensitive nature of topics being discussed. This was accompanied by a video link, which depicted a restorative conference and factual information about sexual offences—potential topics of RJ conferences⁴⁷

This video engaged misinformed beliefs about RJ as a soft response to crime and sexual offenders as innate predators so that participants could respond to questions having been given factual information about RJ and the underlying factors that contribute to persons committing heinous crimes such as sexual offences⁴⁸ (Tsui, 2014; NCIS, 2007; Thomas, 2004; Sanghara, 2006; Johnstone, 2013; Bohart & Plumm, 2015). This video was used across data collection methods to maintain consistency (Olsen, 2004; Bryman, 2011).

Focus Groups

A focus group interview allows for communication between research participants to create data (Kitzinger, 1995). Focus groups are also most suitable for the collection of in-depth information on topics that are not well understood or under-studied by researchers, particularly those who have some shared experience that makes their perspective valuable to the research

⁴⁷ Wright (2006) notes that online questionnaires can be beneficial in garnering information from persons who may be hesitant to speak in person. Anecdotal evidence from the interviews indicated that there is an unwillingness of Jamaican women of a higher socio-economic status to participate in-group conversations about sexual violence. Many of the studies that examine sexual violence in Jamaica focus on the connection between low socio-economic backgrounds and sexual violence (Eggleston et al. 1999; Arscott-Mills, 2001; Amnesty International, 2006; Baumgartner et al. 2009; Jones, 2010; Ishida, Stupp & McDonald, 2011; Sukhu, 2012; Lansford et al. 2014). However a number of studies that attempt to garner information from a range of social classes use self-administered questionnaires (Griffith, Negy & Chadee, 2006; Jones & Jemmott, 2009; Jones, 2011; Pasura et al. 2013). Therefore, a questionnaire seemed an appropriate and timesaving method to obtain information from individuals of a wider demographic.

⁴⁸ This aspect of the research is in keeping with the concerns discussed within the study by Taylor et al. (2012). In this study, researchers noted that one of its flaws was the fact that it did not examine what the participants knew about RJ at the beginning of the research.

(Kitzinger, 1995; Vaughn, Schumm & Sinagub, 1996; Balch & Mertens, 1999; Seymour, 2004; Holcomb et al. 2006; Jones et al. 2009).

By means of stratified sampling, I recruited participants between the ages of 18 and 40 for two focus groups. Stratified sampling is ideal for researchers interested in exploring the views of individuals who have some shared characteristic or interest (Teddie & Yu, 2007). Focus groups were divided into sets of participants that represented potential stakeholders in an RJ process: 1) A group of eight female victim-survivors and 2) A group of seven community members⁴⁹. The focus groups were further split into two sessions of 2; (4 hours in total) where participants gathered in a private room and were seated in a circle. During the first session, participants were able to discuss their awareness of RJ and the justice system. Prior to the second session, the video provided in the questionnaire was shown to give participants a basic understanding of the topics being discussed and dispel any prior misinformation. After the video presentation, the second session focused on gaining in-depth information about how Jamaicans, particularly those who had been victims of crime, viewed the restorative process and how they would adapt it to suit their needs and the Jamaican political, cultural and economic context. All participants from the female victim survivor focus group were recruited from inner-city communities with the assistance of a local women's

⁴⁹ In keeping with the feminist methodology literature, it was important for the group to be homogenous across experiences, age, race and class in order to make participants feel comfortable and reduce any possible harm. Kitzinger (1995) states that most researchers recommend some form of homogeneity within the focus group setting in order to gain as much information about the perspective of the collective (Ginsburg et al. 2002; Hollander, 2004; Weist et al. 2007; Jones et al. 2009; Jacobson, Phillips & Edgar, 2010). Focus groups are also less intrusive because of the reduced role of the facilitator, which means that participants can control their level of involvement (Barkhuizen, 2011). The homogenous group setting can also create a space of empathy and support for individuals who have been through similar experiences (Barkhuizen, 2011). In this way, focus groups may be beneficial to the researcher and the participants.

rights group and the community members were recruited from a local church. As the primary researcher I acted as a facilitator for both focus groups, alongside a clinical psychologist⁵⁰.

According to Seymour et al. (2004) focus groups are able to: (i) identify participants' most salient needs, (ii) seek input from a variety of stakeholders about rights and services, and (iii) identify strengths and gaps in public policy. As noted previously, the Jamaican government carried out public consultations as a way of ascertaining public opinion during the development of the national RJ policy. As will be discussed⁵¹, these consultations failed to collect relevant information to develop a RJ programme that addressed the realities of the Jamaican public. My focus groups aimed to highlight the failure of the public consultations by demonstrating the wealth of information that could have benefitted the development of a more contextually relevant national RJ policy by considering issues such as the distrust of the government, the presence of dons and their informal justice systems and more specifically the value of the perspectives of potential stakeholders, that is, victims, offenders and participating community members.

Documents and Observations

The use of documents is essential in social sciences and in political science (Wesley, as cited in Kaal, Maks & Elfrinkhof, 2014). I used an intensity sampling strategy to select a range of documents that had detailed, relevant content on: (i) crime rates in Jamaica, (ii) the current state of the justice system and its reform, (iii) policymaking in Jamaica, and (iv) the RJ national policy and its implementation. These documents-which are identified in Appendix Three- -provided valuable

⁵⁰ A female psychologist co-facilitated the session to assist should there be any discomfort for the victim-survivors. In the community focus group, a male clinical psychologist was used to provide a balanced representation of gender within a mixed group.

⁵¹ For instance, the Jamaican government had focus groups with large numbers of participants and failed to categorise groups in accordance with types of stakeholders that would utilize restorative practices.

information regarding the intended actions of the Jamaican government to reduce crime as well as their success or failure to achieve these goals. They provided a wealth of background knowledge on the history of the Jamaican justice system, the plan for its reform as well as the outlined process for the development and implementation of the RJ policy and programme, including identification of key stakeholders, organisational and financial capacity and reasons for the successes and failures⁵². I was able to cross-reference and triangulate this data with the rest of the data collected.

I also used observations to collect data for this study. An observation is defined as “the systematic description of events, behaviours and artefacts in the social setting chosen for study” (Marshall & Rossman (1989) and is particularly useful in collating qualitative research as it allows researchers to examine intricate interactions within a natural environment (Rossman, 2010). I used participant observation, which refers to an observational approach that allows the researcher to immerse himself or herself in the research setting (Mason, 2016), and share first-hand the experience of participants and connect with those experiences, giving an indication of how and why persons behave (Mason, 2016; Kawulich, 2005).

Traditionally, researchers find participant observation useful during the exploratory aspects of research due to the wealth of information that could be collected (Guest, Namey & Mitchell, 2013). Participant observation contributes to the rich multi-dimensional description of the phenomena being examined (Mason, 2014; Kawulich, 2005), and is considered applicable to situations where there is little known about the event or if there is no other way to obtain the data (Jorgensen, 1989; Mason, 2014; Grix, 2004). I used participant observation for its capacity to provide insight, to access information otherwise unavailable, and to confirm information collected through other methods. As mentioned previously, there is very little documented information on the implementation of national RJ policy, particularly information Public Relations and sensitisation

⁵² Many of these documents were accessed through the Access to Information Act.

efforts of the Jamaican government. I was able to gain first hand experience on how RJ functions in Jamaica, the effect of the spaces in which they operate as well as how RJ is presented to and perceived by the public respectively. This is information was not available from other forms of data collection, since none of the focus groups participants had attended an RJ event and many of the elite interviews could not recall details of sensitisation events attended.

I observed events that were related directly to the implementation of the RJ policy; a RJ pre-meeting at the Tower Hill RJ centre⁵³ (See Appendix Six), a site visit to the Spanish Town RJ centre as well as the 2015 International RJ Conference and the Launch Exhibition of RJ weeks at the National Tom Redcam Library. Mr Roydon Hall (Acting RJ director) and Donna Parchment-Brown (Head of JRIU) invited me to these events.

Jorgensen (1989) states that a researcher's involvement may be overt, (that is having the insiders aware of the researcher's presence) or covert (without the knowledge of the insiders). However the literature discusses the fact that these positions can overlap within any study (Mulhall, 2003; Guest, Namey & Mitchell, 2013). For the most part, I maintained an overt presence at all of the observations. For instance, at the pre-meetings for the restorative conference, the facilitators knew that I was researching RJ for my thesis⁵⁴. At the conference and library exhibition, many persons whom I had interviewed were in attendance and aware of my status as a research student. For attendees who did not know me, I introduced myself as a research student with an interest in RJ without indicating that I was there to observe the events taking place and the people involved. There

⁵³ Due to government restrictions, I was unable to observe a conference in my official capacity as a researcher. However, I was granted access to participate in a restorative conference as a community member. Unfortunately, the actual conference did not take place, due to a failure to find a mutually convenient time for all parties to meet.

⁵⁴ The acting director of the RJ Unit was one of the facilitators. He informed his co-facilitator that I was a research student.

were other students present, which allowed me to fit in as a regular attendee. I had no formal role in the activities⁵⁵.

Triangulation

As part of analysing the data, I cross-matched and triangulated the information garnered from documents and newspaper articles with all other data collected. Triangulation is defined as, ‘the mixing of data or methods so that diverse viewpoints or standpoints cast light upon a topic’ (Olsen, 2004; Bryman et al. 2011). Researchers use triangulation to approach a study from ‘different angles by using different methods’ (Grix, 2004). Sale et al. (2002) acknowledge that this approach is useful particularly in complex studies, such as the current one, where the real world phenomena being examined require information from multiple perspectives. These varying perspectives strengthen the validity of the research because the information obtained from one data collection method can be confirmed through data collected from other approaches (Olsen, 2004; Bryman 2011; Denzin, 2012). Within the current research, the theme of community distrust of the government is consistent across both semi-structured interviews and focus groups conducted which shows that one form of data collection may shed light on initial information gained from another. Document analysis indicated noticeable time gaps between the provision of funding, the establishment of the RJ unit, the drafting of the policy and its publication. The official government documentation did not explain the reason/s for these time lapses. By conducting semi-structured elite interviews with a range of political officials, I was able to attribute these gaps to changes in political leadership within parties and at the national level. Triangulating data from interviews and participant observation also confirmed information attained from each method. During my observations at the International RJ Conference, I noted a lack of awareness amongst the legal fraternity and funders about the restorative conference as a practice. I was able to compare this with

⁵⁵ At the site visit to Spanish Town, the centre was empty and there was no one to interact with.

the level of awareness of interviewees from the Department of Public Prosecutions and members of the judiciary as a way of reaffirming the lack of awareness amongst key stakeholders.

Data Analysis

While there are a variety of ways in which qualitative data can be analysed, there are a few common factors that proponents of qualitative data analysis agree upon as essential to the process. One such method is immersion in the data, which involves a systematic approach to organising, and coding data and the creation of categories/thematic frameworks (Kohlbacher, 2006; Marshall & Rossman, 2006; Srivastava, 2009).

For this research, I chose to use framework analysis (Ritchie & Spencer, 1999; Srivastava, 2009; Gale et al. 2013). Framework analysis is used widely in policy research and it embraces a variety of data collection methods and overlaps with other approaches in terms of the immersion in the data, the creation of categories and the importance of coding the data systematically. Srivastava (2009) describes the process as follows: (i) familiarisation, (ii) identifying a thematic framework, (iii) indexing, (iv) charting, and (v) mapping and interpretation.

The defining feature of framework analysis is the sorting of the data into matrix outputs. These matrix outputs allow data to be compared across cases and within cases (Gale et al, 2013), facilitating the revision of ideas. As a result, I transcribed all interviews, focus groups and notes from observations into Microsoft Word documents and input the data from the questionnaire into an excel spread sheet. I placed these into separate files. In order to immerse or familiarise myself with the data I read these transcriptions, the initial notations from the observations and listened to the audio recordings several times. From this familiarisation, I organised and coded the relevant data under categories of recurring ideas, such as involvement of civil society, political competitiveness and sustainability with the use of NVIVO. From these groupings, I identified main overarching

themes; (i) type of collaboration with/level of involvement of non-state stakeholders (Public, civil society, dons, Maroons), (ii) collaboration between political parties (iii) consideration/neglect of Jamaican social, legal, cultural and economic context and (iv) policy development versus implementation.

Another strength of this approach is that it works within a pre-determined framework as dictated by the research questions but is open to the incorporation of emerging themes that are discovered within the data (Ritchie & Spence, 1999; Srivastava, 2009). Concepts first suggested by the research questions may come to seem less relevant than expected. Initially, sexual violence was identified as a theme. In fact, it is highlighted as one of the main problems to be addressed by justice reform efforts (Harriott & Jones, 2016). While it was determined that the application of RJ to sexual violence was an important part of the discussion, there was not sufficient evidence to make it central to the thesis. This was due to the lack of local research on sexual violence in Jamaica and the decision of the Jamaican government to exclude sexual offences from the list of crimes that could be addressed by RJ under the national RJ policy.

Limitations of the Study

This research suffered from some limitations, particularly in the collection and interpretation of data. The questionnaire suffered from selection bias, which is caused by a preferential choice of participants that is not independent of the outcome (Elwert & Winship, 2014). In this study, participation was restricted to persons with internet access, which may have limited the generalisability of the results to individuals of a certain socio-economic status, as according to the WB, only 40.5% of Jamaicans have access to the internet (The WB, <http://data.worldbank.org/indicator/IT.NET.USER.P2>, accessed, August 6, 2015). Anecdotal evidence from the interviews

indicated that there was an unwillingness of Jamaicans of a higher socio-economic status to participate As conversations about crime⁵⁶.

As stated previously, the questionnaire and the focus group were not utilised in order to gain public consensus on RJ. Instead they were used to demonstrate the detailed, rich information that the Jamaican government might have garnered had they embraced a collaborative approach to policymaking. As will be discussed in greater detail, the Jamaican government distributed questionnaires to the same cohort that participated in their ‘talking circles’ in order to bolster the validity of their data collection. However, I demonstrate that the questionnaires could have been used to garner a perspective that is less widely found in public consultation. Unlike, the focus groups, which garnered the opinions of persons from a lower socio-economic status only, the distribution of an online questionnaire data might have provided insight into the attitudes of individuals who are often not part of these studies but contribute to public opinion and can provide support to the RJ programme as volunteers and financial donors. A number of studies that attempt to obtain information from a range of social classes use self-administered questionnaires (Griffith, Negy & Chadee, 2006; Jones & Jemmott, 2009; Jones, 2011; Pasura et al. 2013). Therefore, the issue of selection bias is not applicable, since my intention was not to capture public opinion, but rather to demonstrate how it might have been captured more effectively. A questionnaire was the most suitable complement to focus groups in order to obtain information from a wider cross-section of Jamaican society.

⁵⁶ This may be true of other developing countries as well. In a study that looked at the relationship between women’s socioeconomic status and DV experiences, only 7% of respondents had a secondary education. In addition, only 40% of respondents were part of the ‘rich’ or ‘richer’ categories (Pambe, Gnoumou & Kabore, 2013).

The definition of validity is not fixed within the literature on qualitative methodology (Golafshani, 2003; Rolfe, 2006)⁵⁷. Essentially, qualitative researchers are concerned with accuracy. In order to maximize the accuracy of the research, I engaged in a number of processes that are highlighted within the methodology literature. Triangulation was important for ensuring validity and credibility of the research. I utilised a range of qualitative data collection methods to compare the consistency of results across methods. One problem identified with this research is that readers of the research would be dependent on the ‘interpretation’ of the researcher, making the validity and reliability of the research dubious (Bowen, 2009; Kaal, Maks & Elfrinkhof, 2014). I attempted to minimise these issues through the use of data triangulation. In addition, I engaged in member checking by interviewing some of the authors of the research papers, those involved with writing policy, as well as representatives of both political parties.

The literature on participant observation across disciplines identifies researcher bias as one of the main drawbacks of participant observation (Jorgensen, 1989; Johnson & Sackett, 1998; Drury & Scott, 2001; Kawulich, 2005; Iacono et al. 2009; DeWalt & DeWalt, 2010). Researcher bias occurs when the researcher filters the collected information based on personal interests, rather than presenting a complete picture of events (Kawulich, 2005). I implemented certain measures to minimise this effect by collecting as much information as possible. Maxwell (2002) recommends the use of ‘rich data’ to increase the validity of the research. By providing as much detail as possible, there is less reliance on the author’s interpretation.

Consistent with this idea, I personally transcribed the focus group and interview recordings. Oliver et al. (2005) discuss how transcription can be practiced; a continuum between naturalised and de-naturalised transcription. Naturalised transcription includes as much detail of the audio as possible,

⁵⁷ While there is some consensus on the criteria for quantitative, this is not the case for qualitative (Rolfe, 2006; Denzin, 2009; Bryman 2011).

including speech patterns, accents, pauses and non-verbal activity (Oliver et al. 2005). On the other hand, de-naturalised transcription is focused on the content rather than the delivery of that content, in particular the meanings and perceptions voiced during the conversation. I embraced a form of transcription that is closer to denaturalised transcription on the continuum. My focus was on the informational content of the interviews. However, I transcribed verbatim the use of patois in the transcriptions to ensure that the cultural understanding of the information was retained and indicated intonation of voices to highlight the views and feelings of participants. A note-taker was also present at both focus groups. This was beneficial in case of any malfunctions of the tape recorder and for added assurance that all information was collected accurately (Kitzinger & Barbour, 1997; Powell & Single, 1996). In keeping with the work of Jogensen (1989) I recorded the information during the event. Most researchers find it useful to write field notes as close to the time that the events were observed as possible (Mulhall, 2003). During and after each event, I made notes of my observations. Where possible, I took pictures and collected any PR material available.

Qualitative research is also concerned with the generalisability of the research. Sometimes referred to as transferability or portability, researchers value case study research that can provide value beyond the cases being examined (Maxwell, 2002; Kawulich, 2005). However, as noted earlier, the information garnered from the focus groups and questionnaires was not intended to prove generalisability. The focus groups and the questionnaires demonstrate an ideal collaborative approach to policymaking that would have enabled the Jamaican government to create a fit-for-purpose RJ programme that considered the realities of the Jamaican society⁵⁸.

⁵⁸ However, it is important to note that the understanding of justice of the victim-survivors, their issues with the justice system and their perception of RJ as a way of validating their experience and regaining power is consistent with related literature on women's experience with justice systems and RJ in particular (Frederick & Lizdas, 2010; Rubin, 2010; Pennell & Kim, 2010; Ptacek, 2010; Miller & Iovanni, 2013; Koss, 2014). I will discuss these similarities later on in the thesis.

Finally, there were a number of difficulties that affected my capacity to collect data altogether. According to the literature, there are often challenges faced in conducting elite interviews (Welch et al. 2002; Lilleker, 2003; Kaiser, 2009; Lancaster, 2017). The most prominent of these is access. Lancaster (2017) notes that political elites often occupy roles, which have the capacity to create barriers to the research. This problem is definitely reflected in my research. Similar to Lancaster (2017) and others, I found that my interviews with policymakers and other politically connected officials became limiting in my capacity to access key information, as these gatekeepers were tied to organisational policies and bound to the protection of the reputation of those policies and their affiliated organisations (Welch et al. 2002; Mickez, 2012). Many of my interviewees were very open and frank about the pitfalls of the development of the RJ policy in Jamaica. However, some of the interviewees, particularly those who were not senior staff, were more hesitant to speak for fear of losing their jobs or becoming embroiled in the political competitiveness between the PNP and JLP. For instance, as part of my research, I hoped to observe a RJ conference. Two of my prospective interviewees declined participation as a result of fear of the repercussions on their professional reputation. Vuraldo Barnett, an RJ Centre Manager, indicated that he would not be able to participate due to ‘some recent developments in the unit’ and ‘internal dynamics’. In addition Ruth Carey, former RJ director declined to participate due to the potential impact that her commentary might have on her prospects of starting her own RJ firm. Audrey Barrett, Technical Advisor to the MOJ on the RJ policy (Skype. 10/1/15), reaffirmed this in her interview. She stated,

“It doesn’t surprise me that Ruth wouldn’t speak to you. I won’t speak on her behalf, but Ruth went through a lot at MOJ. Being a political entity, it had a lot of politics going on in it. I watched those who were Jamaican and worked within the system and it can be very tough. Please don’t take it personally, but there were a number of things she had to endure”.

This is consistent with the available literature, where research has shown that junior staff are often more reserved in their comments, when compared with senior participants (Welch et al. 2002).

This issue of access also prevented me from participating in certain activities. Some of the participants were keen to help, but unable due to restrictions imposed by organisational policies and their loyalty to the organisation itself. As noted, the function of the focus groups was to demonstrate the type of useful information that could be garnered from public consultation. In particular I propose that the focus groups could have been used to obtain key information about how prospective stakeholders viewed RJ and how it might best function in Jamaica. As a result I set out to conduct 3 focus groups with different cohorts: victim-survivors, community members and offenders. In particular, I chose incarcerated male sex offenders who had committed offences against adults in order to demonstrate the different possible ways in which RJ could be adapted to address a more severe crime that had been largely unaddressed or mishandled by the Jamaican government. In order to access offenders, I made an application to The Department of Corrections. However, I found that there were a number of blocks that were in place to prevent such access. After several months of speaking with the head of research at the department and making plans to conduct the focus group, I received a letter from the Commissioner of Corrections, which asked me to make a number of changes to my thesis and methodology. In this letter, it asked for documents I had already provided, such as an official letter from the University of Warwick. In addition, I was told that my thesis would have to be reviewed by the Department before submission, where they reserved the right to make changes to the final draft and publish the document themselves. Compounded by the consistent delays in getting a response from the department, I was unable to obtain access to a group of offenders. This problem was affirmed during my interview with Dr. Clayton Sewell, head of Ward 21 at the UWI (UWI Offices, 9/1/14). He indicated that he faced similar issues in trying to conduct research on the correlation between mental health and sexual offences in Jamaica. He had been told that his research could not be allowed for fear of ‘embarrassment to the Jamaican government’. This reduced the validity of the focus groups in terms

of their ability to demonstrate how the Jamaican government might have used it effectively to garner the input of prospective RJ stakeholders.

Also, there were practical issues that affected my access to information. For instance, much of the statistical information I requested from the Statistical Institute of Jamaica (STATIN) was unavailable. I requested information regarding statistics on the arrest, acquittals and convictions of various types of sexual offences. However this information was only available for a certain period of time, since prior to the implementation of the 2009 Sexual Offences Act, many sexual offences such as rape and sexual assault were all identified as Carnal Abuse. As a result, disaggregated statistics were unavailable prior to 2011. As a result my contribution to the discussion of addressing sexual violence in Jamaica became a less significant aspect of the thesis. In addition, I was not granted access to depersonalised transcripts or individual review of RJ cases due to protocols regarding confidentiality. I also requested the MOJ annual summary report on RJ that is provided to funders. However I was told that this was not yet available for public dissemination. This information limited the capacity of my research to speak to the reception of the public to RJ and the way in which the process took place in Jamaica.

In order to respond to this gap, I attempted to observe a RJ conference. I was granted permission by Roydon Hall, the acting director of the RJ unit, to participate in a RJ conference as a community member for a community dispute between landlord and tenant. However after participating in the pre-meetings, I was told that the conference would no longer take place due to a failure to coordinate a mutually convenient time for all stakeholders to come together. While I was able to receive a detailed account of what would take place in a RJ conference through my interview with Roydon Hall and my participation in the pre-meeting, I was unable to triangulate this information with a first hand account of the process.

Despite these limitations, the discussion of the development and implementation of RJ policy within this study adds value. Jamaica is the first country in the Caribbean to develop a national RJ policy. Examining this policy can provide lessons for other British post-colonial developing countries, particularly those within the Caribbean, due to overlapping contexts in terms of hierarchical political systems, high crime rates and public mistrust of the state. Methodologically, the research demonstrates the usefulness of the Dolowitz & Marsh framework to penal policy transfer, particularly in developing and post-conflict jurisdictions where there is a lack of experience with reform or policy implementation generally.

Ethical Considerations

Ethics refers to what should or should not be done in order to minimise the potential of harm for all involved in the research, both participants and researchers (Grix, 2004). It is a duty of standards pertaining to behaviour and morality (Shanmuganathan, 2005), which will vary across disciplines. For the purposes of this research, I was guided by the ethical statement and guidelines provided by the University of Warwick. The following section will identify those guidelines that were pertinent to the research and how I considered them.

Protection of Participants and Researcher

In order to ensure the safety of participants, deception was avoided throughout the research. All participants were told about the nature of the project and what the information collected would be used for at the beginning of the focus groups and interviews. A clinical psychologist was present at both focus groups. The facilitators vetted the questions and video presentation in terms of their potential to cause distress to vulnerable participants. In addition, a pilot study was conducted where feedback was given on the phrasing of the questions as well as the video. In a continued effort to protect participants, all participants were given debriefing packs, which provided them with

information in case they wished to seek advice/help after participating in the study. The physical safety of focus group participants and interviewees was ensured by holding these sessions in private and familiar spaces that were not located in areas that are associated with crime, such as private offices, a church and a women's community centre. All focus groups were given aliases in order to ensure anonymity.

To the best of my knowledge, none of my actions as an observer posed a threat to attendees. I did not collect any data that might have been incriminating or dangerous and I did not compromise anyone's privacy by using audio or video recording. During the observation process, my interaction with attendees of the events was minimal. Guest, Namey & Mitchell (2013) note that the level of interaction with those being observed is important when considering whether or not to gain consent. In the case of this study, I did not interview any attendees or speak to any one individual for an extended period. Most of my conversations were limited to general conversations where attendees and I discussed our interests in RJ.

Consent

There are 3 main factors that the literature suggests should be considered for consent and deception: (i) the setting, (ii) self-presentation, and (iii) the effect on participants (Mulhall 2003; Namey, Guest & Mitchell, 2013). For focus groups and interviewees, all persons provided both written and verbal consent. Focus group participants were asked to sign consent forms and agree orally to participate. In cases where literacy was a concern, a facilitator was on hand to explain the content of the consent form to participants and where they were unable to sign, they were asked to make a mark in the consent box. A facilitator witnessed both types of signatures. In addition, participants of both focus groups and interviews were told that they were free to leave the study

without consequence at any point in time. There was no deception involved in any of the research and all participants agreed to partake in the study willingly. No form of coercion was used.

For observations, complete consent in public settings is not usually required. The literature on participant observation acknowledges that gaining consent in public settings is particularly difficult and in many cases, impossible (Mulhall, 2003; Guest, Namey & Mitchell, 2013). Researchers are free to collect information in public spaces, provided that the actions or conversations being observed are not considered to be private (Mulhall, 2003; Namey, Guest, & Mitchell, 2013). Although I had gained consent from the ‘gatekeepers’, it was difficult to gain consent from those I interacted with, as well as gain consent from all of the attendees observed. However, the way I presented myself limited the need for consent and negated the need for deception. Mulhall (2003) and others note that in identifying myself as a research student, and providing an identity that is in keeping with the goals and objectives of the study, consent is implied and deception is considered negligible (Guest, Namey & Mitchell, 2013). In addition to gaining consent from the individuals who invited me to these events, I gave attendees whom I interacted with truthful information regarding my position as a research student and my interest in RJ. Although I did not indicate that my aim was to observe the events, I did not deceive anyone in terms of my role and my interest in attending the events.

Privacy

One of the main issues surrounding privacy and confidentiality is that of naming the participants of the study. Anonymity is one form of confidentiality, which was an important consideration within this research. Within the literature, there is some discussion about the difficulty of deciding whether to identify participants (Welch, 2002; Kaiser, 2009; Mickez, 2012; Kitinger, 2014; Lancaster, 2017). The academic literature on social research highlights the importance of

confidentiality, even when they conflict with the aims of the research (Siedman, 1998; Yin, 2009; Bailey, 2007).

Complete anonymity is often impossible as persons involved in data collection often know and meet participants. However, there are two forms of confidentiality discussed within the literature. The dominant/default approach requires that researchers maintain anonymity of respondents through the collection, analysis and report of data collected (Kaiser, 2009; Kitzinger, 2014). This can be done in a number of ways, including the use of aliases, depersonalised data sets and any other wishes that the participant requests. This is the approach that I took for the focus groups. While none of the participants expressed any concern as to how the information they provided would be used, efforts were made to ensure the privacy of all. At the beginning of each focus group, participants were asked to choose aliases to ensure anonymity and to use those aliases in addressing each other throughout the focus group to ensure recognition of voices during transcription later on⁵⁹. A note taker was present for both focus groups. This was beneficial in case of any malfunctions of the tape recorder and for added assurance that all information was collected accurately (Powell & Single, 1996; Kitzinger & Barbour, 1997).

However, in the case of interviewees, the dominant approach would not have provided the same quality of confidentiality. As it relates to interviewing political elites, default anonymity has a number of disadvantages (Kitzinger, 2014). First, keeping places and names hidden forces the research to lose the rich, detailed nature of the data and limits scope for analysis, which can run counter to the aim of the research (Kitzinger, 2014). Within the thesis, the context is integral to the discussion of the policymaking process as it seeks to contribute to the development of justice policymaking within Jamaican and the English-Speaking Caribbean during a specific time frame.

⁵⁹ It was not necessary to anonymise the meeting places as none of the participants were frequent visitors or associated with the spaces where focus groups were held.

As will emerge, the siting of the RJ centres in impoverished areas with high instances of crime, the political loyalties of actors and the change in roles and political administrations are all contextual aspects that have a direct effect on the policymaking process. To decouple these factors from the discussion of events would ultimately limit the transformative goals of this research to guide policymakers in identifying the various factors that can affect justice policymaking within this context, learning from the mistakes made and ultimately improving the effectiveness of justice policymaking and reducing crime in the region. History and context is certainly not static. Within this thesis, I provide insight into the historical relationship between donors and the Jamaican government. I go on to explain that, despite changes to this relationship, there has been a failure of the Jamaican government to embrace a more collaborative approach to policymaking that gives primacy to the needs of Jamaicans rather than donor agendas. This shift in context is time-specific and directly affects the outcome of the RJ policy, which is largely adapted from the province of Nova Scotia in Canada, would not be brought to light without identifying the international consultants, the sites of study tours conducted by the Jamaican government and the distinction in relationships between PNP, JLP and Canadian actors involved.

In addition, default anonymity often does not altogether prevent participants' identification altogether. Anonymizing elite interviews provides confidentiality outside of the context in which the study takes place (Kaiser, 2009; Kitzinger, 2014). However, it often fails to provide within the environment. Where studies examine 'small world' environments, elite interviewees and their political affiliations can be easily identified through the information they provide, timescales of involvement in the policymaking exercise and job titles, even when vaguely described. For instance, Kaiser (2009) provides an example of a researcher who studied teachers within a school district; one could easily identify individual teachers by simply indicating their age, gender and the number of years spent at the school. Similarly Elias (1986) conducted a health study within a remote

community. Despite anonymising data, participants were able to themselves and others, which caused relationships within the community to become strained.

When conducting interviews, I attempted to address these issues by embracing the ‘alternative approach’. This approach, commonly utilised by anthropologists, interprets confidentiality with the wishes of the participants. It is part of a dialogue with research participants, where they have the choice to be identified within the research. Ultimately, this gives respondents greater control of how their participation is embedded in the research. In addition, it minimises loss of integrity to the research.

The relevant literature notes that it is essential to consider the intended audience of the research (Kaiser, 2009; Kitzinger, 2014). Researchers note that anonymity cannot be applied without consideration for context. There must be a balance between protecting participants and maintaining the integrity and purpose of the data and the research itself, as anonymising data can be a time-consuming process (Kaiser, 2009; Kitzinger, 2014). As noted, one of the intended audiences of this thesis is Caribbean policymakers and other actors involved in policymaking. These persons are likely to identify participants based on the very information that informs the thesis directly; information they provide about the policymaking exercise, the opinions held regarding Jamaican politics and RJ generally, the role that they played in the policymaking process and the timeline of that involvement. Because of the ‘small world’ environment that is the Jamaican political sphere, anonymising names and location would not have prevented participants from being identified by policymakers, other political figures and the Jamaican public. For instance, Permanent Secretary, Carol Palmer is the only PS that has served across political administrations. Her departure from the programme had a significant effect on delivering the policy and the involvement of one of the key stakeholders - International Institute of Restorative Practices (IIRP). In addition to her own interview which highlights her level of awareness about the RJ programme, her role is described in

details by several other interviewees in terms of her integral involvement in the programme, her position within the MOJ and her poor working relationships with other actors in the development of the RJ policy, such as Ruth Carey, former RJU director and lead writer of the RJ policy.

Anonymising her would not have afforded her any increased confidentiality, but it might have diminished the utility of the data obtained from other interviews. In embracing the alternative approach, I allowed participants to decide if they wanted to be identified. All participants were asked whether they wanted anonymity. Only one person (George*, Stand up for Jamaica and RJ facilitator) requested anonymity.

Researcher Effect

'Researcher effect' refers to the effect that the presence of the researcher has on the participants of the study. It is argued that any behaviour that takes place in response to the presence of the researcher should be rejected (Monahan & Fisher, 2010). Having influenced the participant, the researcher is no longer able to gain a true sense of the participants being studied. Researcher effect 'contaminates the pure social environment being studied' (Monahan & Fisher, 2010).

As a researcher I was constantly aware of the potential effect that my presence could have on participants. Some of the debates surrounding researcher effect focus on how researchers interact with participants as 'insiders' or 'outsiders' and how those positions affect the research outcomes (Natour, 2011). Bryman et al (2011) states that shared cultural membership is advantageous to conducting research. Throughout the research, most interviewees and participants were forthcoming with information and did not decline or hesitate to answer any questions. This level of comfort may have been due to my status as a fellow Jamaican and my connection with trusted individuals and organisations that aided in sampling of interviews and my recruitment of focus groups participants.

Some researchers who discuss researcher effect state that the longer the researcher interacts with participants, the more at ease they should feel being themselves and dismissing any suspicions (Spano, 2006; Monahan & Fisher, 2010). Although I did not have several months to interact with participants, many of the interviews began with recognition of the fact that the participant and I knew each other through mutual contacts.

Natour (2011) states that we are never all-out insiders or all-out outsiders. Despite the cultural similarities, there were still instances where I was viewed differently. In the focus groups, there were persons who viewed me as an ‘outsider’ in terms of class. Being aware of my ‘outsider’ status as a professional from a different socio-economic background, I maintained an informal demeanour to minimise any mistrust of the participants. To counter this, Fox (2004) notes the benefits of being aware of the cultural similarities and differences between the researcher and participants in planning and carrying out research. For instance, we chose to start the focus groups with an icebreaker. The icebreaker helped participants to be comfortable with me as a facilitator and minimised their view of me as a researcher. During the debriefing sessions, we had an opportunity to discuss any ways in which we could have improved the focus group. In addition, conducting a pilot focus group⁶⁰ was beneficial in terms of ensuring that our approach as facilitators was not intimidating and that the atmosphere was as comfortable as possible. For example, during the pilot focus group, some of the participants suggested that my language be less formal in order to make the conversation more casual and free-flowing. In the focus groups and interviews I was able to speak patois with participants, which emphasised my position as a fellow Jamaican. These activities helped me to ensure that I reduced as much influence as possible.

⁶⁰ This pilot focus group was conducted on the 08/11/2014 at 17:46.

McDonald (2005) suggests that it may be beneficial to discuss the researcher effect with the participants directly. One of the participants from the victim-survivor focus group, who had been particularly quiet during the first half of the focus group, spoke with me at the end of the first session and said that she thought I would be ‘stuck up’. By discussing the participant’s concerns directly, she could see my genuine passion for the topic and became much more engaged during the second session and even asked to recite a poem about her experiences.

In cases where I did not know participants well, I attempted to build trust by spending time with the participant prior to the interview where possible. Prior to my interview with the director of the RJ unit, we had an initial meeting where we discussed in a casual setting my aims for the research and my dedication to Jamaica. This approach made participants more willing to share information with me.

It may be impossible to remove researcher effect completely. Researchers may influence participants to pretend or hide the truth, whether due to anxiety, mistrust or general uncertainty. However, Monahan & Fisher (2010) state that changes in behaviour caused by the researcher, otherwise referred to as ‘staged performances,’ can be viewed as a strength of the research rather than a setback (Monahan & Fisher, 2010). A staged performance represents some truth about participants in terms of their perception, values, cultural background and what they consider as important to the researcher. Staged performances highlight how individuals wish to be viewed and what information they value most (Monahan & Fisher, 2010). For instance, PS Carol Palmer (MOJ Offices, 10/1/15) was the only interviewee who was hesitant to answer questions. However, her emphasis on Jamaica as following in the footsteps of developed jurisdictions, indicated the value she placed on ‘being consistent with international best practice.

Conclusion

Conducting this fieldwork with elite interviewees on sensitive issues within Jamaican society required an immense amount of planning prior to data collection process. This chapter highlights the careful approach taken to collecting this qualitative information, which I will discuss in greater detail in Chapter 7. In the next few chapters, I will provide information on the Jamaican political, economic and social context. This background is essential to this discussion since it demonstrates the limiting effect of political patronage and Jamaica's dependence on the global economy on the capacity of the Jamaican government to address crime effectively.

Chapter 3: Crime, Politics and Justice in Jamaica

In this chapter, I discuss the historical exploitation of organised crime and violence for electoral advantage by political officials. This collusion of politicians and criminals in order to gain patronage has resulted in the hesitation of the state to curb instances of political violence and organised crime. The failure to address these crimes is compounded by a lack of economic independence of the state, which has resulted in the Jamaican government being unable to fulfil many of its responsibilities to Jamaican society, including the overall administration of justice. Consequently, the Jamaican community has developed a mistrust of the Jamaican government.

Many Jamaicans outside the political parties have pledged their support to criminal leaders, otherwise known as ‘dons’, whose political associations enable their immunity from punishment and ability to take on responsibilities akin to those of state actors. Policy has become a political tool for regaining public trust; during election periods, politicians seek to demonstrate their commitment to change by presenting policy ideas. The literature notes that these efforts are often superficial, as many policies are rarely implemented effectively, due to ties with the dons. In addition, the lack of political will and competition between political parties for power means that opposition parties often abandon policies once they come into power.

The literature on politics and policymaking identifies a number of factors that affect policymaking, such as the nature of the political system, political ideology, the lack of financial independence as well as political conflict (Stone, 1976; Biddle & Stephans, 1989; Jones & Schoburgh, 2004; Levy, 2009; Edie, 2011; Lewis, 2012). Many of these factors are present in Jamaica and affect the development of the national RJ policy. I will now go on to describe the Jamaican context, which will enable me to highlight how RJ is particularly suited to this context later on in the thesis.

Over the next few chapters I will highlight the social, political and economic context of Jamaica. I will discuss how this context led to the antagonistic relationship between parties in Jamaica, public mistrust of the state, the rise of criminal non-state leaders and the politicisation of civil society. I will explore how these factors have affected policymaking historically. In this chapter, I focus on how political parties competed to successfully manage multiple and conflicting class interests in order to maintain power despite a lack of economic independence. I go on to highlight the shift in some of these areas, such as the de-segmentation of Jamaican class structure through upward social mobility post-1970s, the less coercive approach of donors, and the increased engagement between civil society and the Jamaican government in terms of justice policy. I propose that RJ was particularly ideal to the Jamaican context in light of the reduction in political violence, the shift away from the historically semi-coercive relationship with donors and the de-politicisation of civil society to implement a contextualised as well as the long-standing history of RJ in Jamaica.

Jamaican Class Structure

In Chapter 2, I provided a geographic breakdown of Kingston, which indicates that a majority of crime took place within the KMR region. The KMR region demonstrates the segregation of the wealthy and poor as part of the larger class structure in Jamaica. Stone (1976), views class as a ‘dominant system in which economic, ideological and institutional components combine to constitute an integrated power structure’⁶¹.

⁶¹ Initially, the class system maintains boundaries through their control over distribution, management of resources and their influence over the state in accordance with similar ideological tendencies (Stone, 1976). This type of class-system is a product of colonialism, where distinctions were based on ethnicity and race (Stone, 1986; Jaffe, 2012; Harriott et al. 2012; Carnegie, 2014). During the colonial period, the white elite minority had ownership over black slaves. A paternalist competitive class structure emerged during the transition from the abolition of slavery to independence (1838-1962), which sought to maintain the wealth and power of white elites and continued subjugation of blacks, who threatened the status quo by mobilising under the leadership of Marcus Garvey. This shift allowed for further inclusion of other light-skinned groups such as the Chinese and Lebanese into the elite (Stone, 1972). Under a competitive class structure, it was perceived that economic power would be the determining factor of class identity.

Carl Stone (1978) developed a class categorisation specific to the Jamaican context, which considered the intermingling of class and race, similarity of ideology across classes and most importantly their relationship to distribution of wealth⁶² (See Figure 3.0) (Stone, 1978; Edie, 1997).

Figure 3.0 Stone's Class Structure of Jamaica

<i>Class groupings</i>	<i>Classes</i>
1. Upper and upper-middle	Capitalists (0.5 per cent) (Owners and managers of large and medium-scale privately owned enterprises and farms that employ wage labour in significant quantities and regularly)
2. Upper-middle	Administrative class (0.5 per cent) (Public sector top bureaucrats and technocrats, independent service professions, politicians, clergymen, etc., who administer and control the key public institutions and public services)
3. Lower-middle	Independent property owners or middle-level capitalists (5 per cent) (Shopkeepers, small businessmen, middle farmers, and landlords who live from rental that accrues from property owning)
4. Lower-middle	Labour aristocracy (15 per cent) (Semi-professionals, technicians, white-collar workers, and high-wage and skilled workers)
5. Lower	Own-account workers or petty capitalists (34 per cent) (Small farmers, higglers, petty-traders, small contractors, etc.)
6. Lower	Working class (25 per cent) (Low wage manual workers)
7. Lower	The long-term or indefinitely unemployed (20 per cent)

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Stone, who looked at class structure leading up to the 1970s, reduces these 7 classes into 3 main groups; (i) upper and upper-middle, (ii) lower-middle and (iii) lower. These social divisions

⁶² This is in contrast to other classifications that are based on European values and bias associated with whiteness and power

were based largely on distribution of wealth and race (Stone, 1976; Edie, 1997; Clarke, 2006).

Upper and upper-middle classes are largely made up of minorities such as whites, Lebanese, Chinese, Indians and light-skinned mixed-race citizens. Statistics indicate that until the 1970s, there was a positive correlation between lighter skin tone, higher levels of education and greater personal income. The vast majority of the wealthy elite population were less likely to experience crime (Harriott et al. 2012). Also, they were more likely to hold key leadership positions (Stone, 1972; 1976; Edie, 1984). The middle class constitutes 18.5% of the population range (Stone, 1972; 1978; Edie, 1984; Carnegie, 2011). On the other hand, lower-middle and lower classes, who represented more than 75% of the population were predominantly black (Stone, 1976; Edie, 1984; Henry-Lee, 2005).

There are three main components of the class bound system; ideological, economic and institutional. Political parties manage these components in order to prevent class conflict from arising. The main areas of conflict are: (i) over distribution of wealth, (ii) over ownership of wealth assets, (iii) rights and social worth of classes, and (iv) access to and control over public sector and state institutions (Stone, 1976).

The economic components of this system are the most common⁶³. Stability in this class-bound domination system rests on a concentration of wealth within a privileged minority of the upper class (also referred to as the minority class) (Stone, 1976; Edie, 1997). All classes are capitalist in nature; they all seek to improve their economic situation through their influence on the state. While the minority class maintains this position as a consistent benefactor for the state, the middle class preserves its status by ensuring political patronage and the lower class negotiates with the state for material resources through its capacity to determine the appointment of political power.

⁶³ Generally, the other issues stated only arise during periods of internal contradictions within classes.

Even though they compete to improve their economic situation in different ways, their shared overall goal means that alliances can be made across classes.

At the time, the stability of the system was also dependent on the consciousness (ideologies) of subordinate classes (also referred to as the majority class), which aligned their interests with that of the minority classes (Stone, 1976). As will be discussed, the state was forced to contend with these opposing interests in order to maintain legitimacy and support. As a result, the state's capacity to steer policy prescription and its approach to crime has been historically compromised.

While Stone (1976) provides a foundation for understanding the post-independence development of class structure in Jamaica, his structure does not consider the changes that took place after the 1970s. Stone's picture of the class structure is based on the post-colonial period, which is largely rooted in the exploitation of the agricultural labour force and the black majority. In 'Class, Status and Social Mobility in Jamaica', Gordon (1987) examines the changes to this class structure: its becoming more heterogeneous and rooted in a capitalist order, with the declining emphasis on race, allowing economic access and education to become determining factors of status.

Figure 3.1 Gordon's Post-1970 Class Structure

Major Class Category	Detailed Occupational Group	Occupational Titles (examples)
MIDDLE STRATA	Higher level managerial and professional	Civil Engineer, Attorney, Managing Director
	Lower level managerial and office supervisory	Personnel officer, Loan officer, Office supervisor
	Lower level professional, technical and sales agents	Nurse, X-ray technician, Travelling salesman
	Secretarial and accounting clerks	Typist, Book-keeper, Bank clerk, Pay clerk
	Other clerks (not sales)	Keypunch operator, Storeroom clerk, Filing clerk
	Sales clerks	Shop clerk, Sales clerk, Betting clerk
PETIT BOURGEOISIE	Employers	Farmer, Gas station operator, Manager-proprietor
	Artisans	Mechanic, Welder, Painter, Taxi operator, Dressmaker
	Traders and related	Shopkeeper, Street vendor, Hairdresser
	Farmers	Rootcrop farmer, Cane farmer, Fisherman
MANUAL WORKERS	Foremen and higher grade service workers	Line supervisor (Alumina), Police, Fireman, Maitre D
	Craftsmen and operatives	Garment Machine operator, Mason, Truck driver
	Other service workers (not domestic)	Security Guard, Waitress, Cleaner, Messenger
	Unskilled manual	Deliveryman, Longshoreman, Construction labourer
	Domestic workers	Household helper
	Agricultural labourers	Cane cutter, Fruit picker, Dairy worker

(Accessed Gordon, 1987)

As can be seen from Figure 3.1, changes took place to class structure; in particular there was an emergence of new status groups between upper and upper middle class groups, the traditional agricultural and labour poor as well as a number of internal changes within the composition of groups previously established by Stone (1976) such as the lower middle class group. These changes occurred as a result of period of industrialisation, shift of foreign capital interests from Britain to the United States and Canada, a shift in focus from agricultural exports to manufacturing, bauxite, tourism and finance (examples of these changes are noted throughout this chapter). This period resulted in an expansion of the economy and job creation.

With this expansion of job opportunities and industry, new social classes emerged; including a working class of skilled workers, a widening middle class of managerial, professional and clerical roles within the private sectors and the state as well as the emergence of a local industrial bourgeoisie and an expanding capitalist sector. That is, there was some upward social mobility seen

within and across classes⁶⁴ Unlike Stone's classification, which is based largely on race, Gordon's classification is largely based on occupational status and its relationship with capitalist exploitation. For instance, the middle stratum consists of wage labourers, who do not necessarily own capital and the petit bourgeoisie (which sits below the middle strata) is composed of small self-earning self-proprietors (Gordon, 1987). Similarly, the top of the lower working class consists of foremen, firemen and policemen who wield a greater level of authority (Gordon, 1987). Although education became a determining factor, it was no longer aligned with the race, income and occupational status of citizens. For instance, the foremen and high-grade service workers earned significantly more than clerical workers, despite occupying a lower class position. Thus, public sector employment is more likely to be a part of the middle strata, regardless of the educational level of economic status.

These changes were significant for the middle and upper classes, who found an opportunity for upward social mobility. For instance, there was a notable shift in the composition of these classes in terms of race, making them more heterogeneous in nature. Between 1943 and 1984, there was significant transition from the middle to upper classes. As a result, black representation amongst managerial and professionals of the (upper) middle strata increased from 20% to 42%. The shift highlighted the emphasis given to occupation and education. Much of the recruitment of the middle strata came from the small propertied class, such as small farmers. 1 of 8 of the middle strata had lower strata of working class origins (unskilled, domesticated and agricultural labourers) (Gordon, 1987). The upper middle strata of professionals also recruited from the lower sections of their own strata (37% of men). Similarly, artisans, traders and employers were more likely to be recruited from small proprietors, including farmers.

⁶⁴ This meant that the determinants of class were not limited to race. Instead economic status and access to education became more independent determining factors of social status.

However, widening inequalities between minority and majority classes also mark the period. As noted above, much of the upward mobility took place within and between the middle strata and the petit bourgeoisie. On the other hand, there was a clear disadvantage for the working class (particularly the lower strata of the working class) in terms of the opportunities to advance their social status. While a vast majority of the upper middle strata were recruited from within the middle strata itself, only 1 in 5 men were recruited from the working class⁶⁵. Only the upper strata of the working class (foremen, policemen) were eligible for recruitment to the middle strata (Gordon, 1987). Gordon (1987) notes that those with backgrounds of agricultural, domestic and manual labour, had almost no chance of entering the upper middle strata. While 37.7% of persons within middle strata inherited the same status, only 4/1000 males with agricultural labour backgrounds entered into the upper middle strata. Although less severe, there were also limited opportunities for entry into the broad middle strata. Only 6 and 7% of males with agricultural and small farming backgrounds respectively rose to the level of the lower middle strata (Gordon, 1987). None of the occupational or small proprietors had any chance of entering the middle strata.

These contrasting outcomes of upward mobility and maintenance of status for certain sections of middle and upper class and the lack thereof for the poor speaks to a number of factors; the limited size of the local elite, the continued clash of interests between the majority and minority classes and the subsequent alignment of local elite interests with that of international funding community. It also provides additional context to the on-going conflict and struggle for access to resources within the majority class. As will be discussed the introduction of neoliberal policies and focus on foreign investment exacerbated this divide between classes. The middle and upper classes that benefitted from these political changes aligned their efforts to exert pressure on political parties

⁶⁵1% of males in the middle strata stay within their class, while only 13% and 8% of the working class and 8% of proprietors were upwardly mobile in status.

to maintain the status quo. On the other hand, the poor, unable to rise in social status, became tools of political parties in exchange for access to resources and power.

Jamaican Politics

Political Structure

Jamaica is a parliamentary democracy. Reflecting Jamaica's status as a former British colony, Jamaica operates a counterpart of the Westminster parliamentary system (Figueroa & Sives, 2010; Morris & Graycar, 2011; Sives, 2012)⁶⁶. The Westminster model has a number of defining characteristics, such as a concentration of executive power in one party and a bare-majority cabinet, cabinet dominance, two-party system; constitutionalism, a neutral civil society, majoritarian system of elections and a centralised government. Many of these characteristics are present in Jamaica.

In culturally homogenous societies, class relationships tend to have the most impact on politics (Stone, 1976). This is exacerbated by the party system. A party system is understood as class-oriented, where political parties put forth effort to appeal to and represent class interests. In Jamaica, both political parties attempt to represent multiple, cross-class interests, while managing any conflicts that exist between them (Stone, 1972; 1976; 1977; Edie, 1997). In order to do this, political parties must develop ideologies that are rooted in class, but that can also attract multiple classes and create alliances between them.

As in Westminster, two main political parties, the People's National Party (PNP) and the Jamaica Labour Party (JLP), dominate Jamaican politics. Both parties were created during the nationalist movement in the 1930s and 1940s, prior to independence in 1962 (Lewis, 2012). They

⁶⁶ The Westminster mode is itself an example of policy transfer, as the English exported it to their Caribbean colonies during the post-war period (Griffith, 2001). Where they ensured accountability amongst politics in England, it is argued that the Westminster model has hindered progress in Jamaica, with particular emphasis on its effect on policymaking (Sutton 1999; Ryan, 1999).

represent competing ideologies that are rooted in the four main class issues noted earlier. The PNP is characterised as a 'radical reformist' party that embraces democratic socialism and state ownership of the economy under the leadership of 'upper-middle class intelligentsia' (Stone, 1976; 1980; Sullivan, 2010; Lewis, 2012, Blake, 2012). Starting as a nationalist movement that sought to empower the working class by taking control of state institutions from the coloniser, the PNP advocated for radical and long-term changes consistent with egalitarianism and social justice. Essentially the PNP sought to minimise the dependence of the state on external funding and distribute resources more evenly across the society, thereby encouraging a positive relationship with the state (Edie, 1984;1986; Sives, 2002; Brown, 2013). Instead of focusing on partnership with the developed world, the PNP sought to develop its own independence by creating partnerships with other post-colonial states that shared their vision of financial independence. During the 1970s, Manley, Prime Minister of the PNP (elected in 1972) tried to develop diplomatic relations with Cuba, Zimbabwe, and Grenada. They developed trading relationships and training programmes that were mutually beneficial, such as sending unemployed Jamaican youth to brigade programmes in Cuba, and young Cuban doctors being given work experience into Jamaica (Edie, 1989; Sives, 2002; Brown, 2013). On the other hand, Manley limited the allowances that had been given to North America such as imposing a levy on the US-owned national bauxite companies; this was later extended to all bauxite that was exported or processed in Jamaica (Edie, 1984; 1989; Sives, 2002; Brown, 2013). Simultaneously, Jamaica began negotiations that would allow them to become majority shareholders of mining operations of major bauxite companies (Edie, 1989; Sives, 2002; Brown, 2013).

The JLP, which began under the leadership of lower-middle class figures, took more of a 'conservative reformist' approach, promoting ideals such as economic liberalisation and privatisation (Stone, 1976; 1980, Sullivan, 2010, Lewis, 2012; Blake, 2012). JLP began as an

alliance of individuals who supported Alexander Bustamante and the Bustamante Industrial Union (BITU). Upon claiming status as a party in 1944, it took on the anti-socialist and demagogic populist agenda of its leader. Over time JLP focused on acceptance of a capitalist free enterprise basis of the economy. They focused on making parochial, short-term and incrementalist decisions by taking action consistent with Western interests; hesitant to alter the consciousness of Jamaicans or class structure as a whole (Sives, 2002; Edie, 2011). After the 1962 election, in which JLP was victorious, Edward Seaga, the new Minister of Finance (and later Prime Minister) cut ties that had developed during the Manley administration. Seaga established a Jamaican-American Business Investment Committee that facilitated more than 1 billion Jamaican dollars of private investment from foreigners and entered into negotiations with the IMF, WB, Inter-American Development Bank (IDB) and Caribbean Development Bank (CDB) (Brown, 2013)⁶⁷.

Over time, both parties have garnered support across classes. The JLP, which started as a workers' movement, began with support predominantly from the trade union base. Their incrementalist, non-intellectual approach was consistent with the interests of the majority classes who had limited aspirations for state power, but sought better distribution of income and improved trade union representation. At the time, the JLP garnered the support of middle and upper classes through their anti-socialist tendencies and big capitalist backing.

The PNP began as a nationalist movement, which represented the ideologies and interests of the educated middle class, who sought increased access to and control of state institutions. Over time, their support came to incorporate the more radical sections across classes, such as its own working class trade union movement through its rhetoric of democratic socialism as well as the

⁶⁷ Also He extradited the Cuban ambassador and revoked plans that were in place for partnerships with other Caribbean countries and even supported the U.S invasion of Grenada (Brown, 2013).

working class radicals and the militant unemployed youth who identified themselves as victims of economic stagnation by capitalists and colonialism (Stone, 1976).

Within class-based politics, parties attempt to articulate the interests of these groups. The more these opposing interests are articulated, the more likely conflict will occur between the classes. In order to find the balance between the two, political systems do the following: (i) multiple agencies articulate interests, but with some common stake in politics of institutional life, (ii) cross-class alliances based on some unifying principle (iii) weakening of threatening classes by political appeals that split political loyalties within classes (iv) building of a minimum system-supportive alignment with a plurality of classes (v) cyclical patterns of change where symbolic articulation of interests of hostile classes for short periods, followed by longer periods of stability of or conflict containment (vi) coalition politics, which allows smaller classes to play a central role in power-balancing between competing classes (vii) avoiding the more divisive issues in partisan or public debate (Stone, 1976;1977).

A number of these approaches are seen in Jamaican policymaking. During the Manley-Seaga era, the literature notes the cyclical change in support for political parties, where parties would articulate conflicting interests of the classes. The policies were clearly driven by their respective ideologies. Under the Manley administration, a number of social programmes were implemented to improve the overall well being of inner-city communities, such as equal pay for women and adult literacy programmes (Edie, 1989; Sives, 2002; Brown, 2013). Under the Minimum Wage law, many of the lower socio-economic status (SES) saw a significant increase in wages. This law and the 1974 Employment Act ensured equal pay for women, many of who were breadwinners of their households (Edie, 1989; Sives, 2002; Brown, 2013).

Under the leadership of Seaga, the JLP administration embraced a neoliberal agenda⁶⁸.

Seaga endorsed pro-US policies in order to repair US-Jamaica groups from distorting state involvement (Harvey, 2005; Thorsen & Lie, 2007). Across jurisdictions, neoliberalism has had negative effects on the provision of relations (Edie, 1984; 1989; Sives, 2002; Brown, 2013). He signed an IMF agreement that imposed a series of structural adjustment policies (SAPs), which were intended to diversify the economy and make Jamaica a legitimate competitor in the world of international trade (Fearon & Laitin, 2006; Galvin, 2011; Jaffe, 2012). These included policies that reduced government spending and deficits, imposed controls on salaries and prices, as well as currency devaluation (Edie, 1989; Sives, 2002; Brown, 2013)⁶⁹.

I will now go on to explain how this political competitiveness between parties led to their involvement in crime and violence and subsequent dependence on criminal actors, which resulted in a failure to address crime effectively. This failure to address crime contributed to the public's loss of faith in government and weakened the legitimacy of the state.

Political Party Competitiveness, Clientelism & Violence

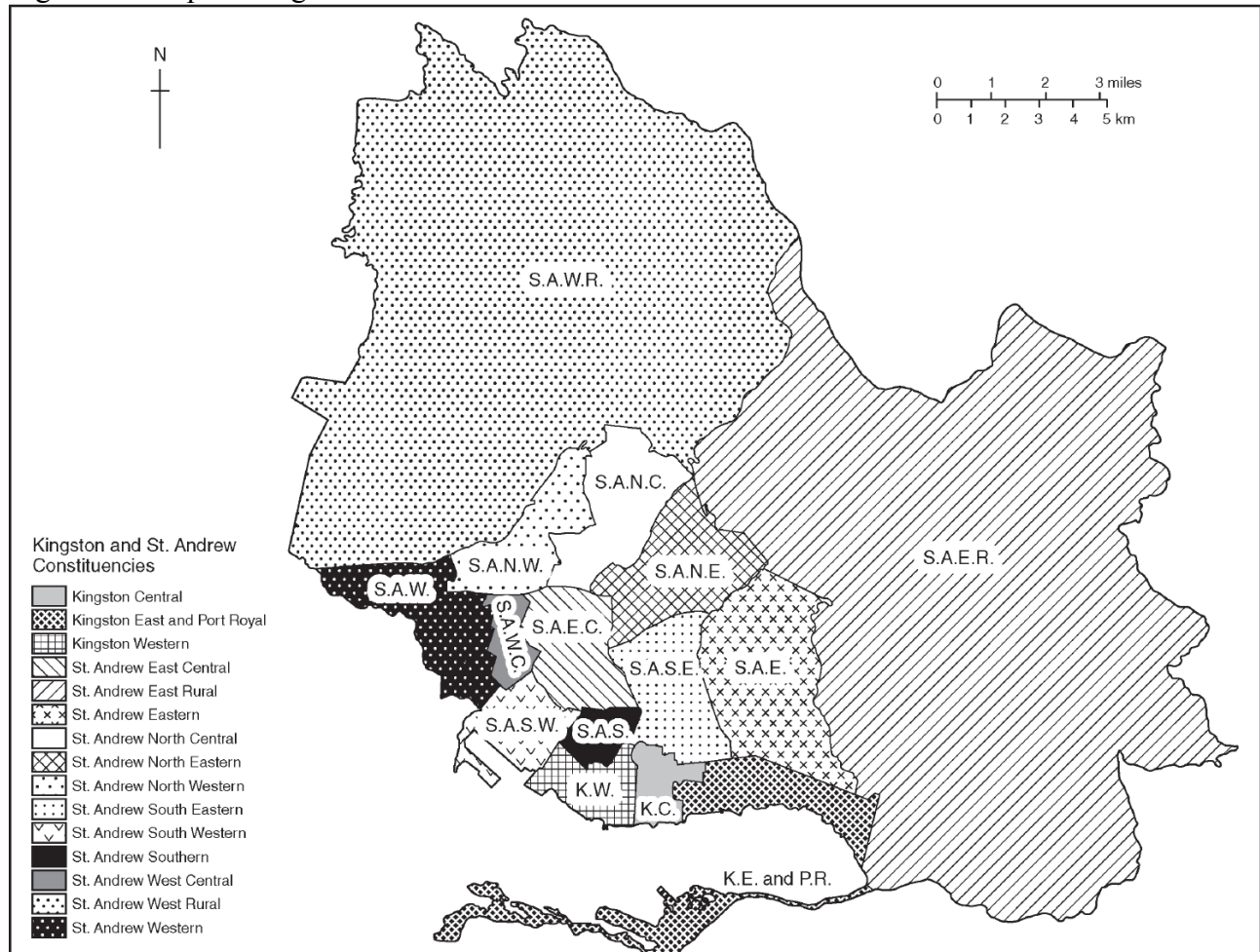
The Westminster model encourages the existence of political strongholds for the two political parties. Within the Kingston and St. Andrew parish, there are fifteen constituencies (See Figure 3.2). Seven of the constituencies, the majority of which are located in the southern part of the region, have long standing political allegiance to one of the two parties (Clarke, 2006). Due to the

⁶⁸ Neo-liberalism is a mode of governance that promotes free market capitalism and limited state involvement. Neo-liberal policies underscore the idea that well-being can be achieved by enabling individual freedoms. In order to do this, the state should not seek to interfere in markets so as to prevent powerful health and security services, subsequently lowering the overall well-being of individuals particularly those from marginalised communities.

⁶⁹ In Chapter 4, I highlight the continued use of policymaking as a political tool within the justice sector through the consistent adoption of policies that are consistent with donor interests, instead of Jamaican context.

large population of the lower class, many of whom reside in this region (which includes the KMA), political support from these constituencies is of great value.

Figure 3.2 Map of Kingston and St. Andrew Constituencies.



(Accessed from Clarke, 2006)

Leading up to independence, both political parties attempted to gain favour with all classes of the Jamaican society. Until 2010, both political parties alternated in forming governments; each party ruled for 33 years (Figuerola & Sives, 2010; Lewis, 2012; Sives, 2012)⁷⁰. A wealth of literature discusses the fight for political hegemony between these two parties in Jamaica (Harriott, 2002;

⁷⁰ In 2006, a study conducted by Boxhill found that 50.5% of Jamaicans identified as PNP supporters. In the 2010 election, there was an unexpected shift in power to the PNP, after only one term of JLP at the helm. Later on in the thesis, I will argue that this change in government caused practical delays in the development of the Jamaican national RJ policy and exacerbated the problems regarding collaboration within the government and between the state and a politicised civil society community.

Lemard & Hemenway, 2006; Smith, 2010; Charles & Beckford, 2012; Lewis, 2012). Until the mid 90's, PNP and JLP engaged in intense and often violent competition for a majority of 60 constituency seats (Morris & Graycar, 2011).

Within politics literature, patronage is the provision of resources or support by organisations to individuals (Edie, 1997; Yagboyaju, 2015). As will be discussed, the widespread use of patronage in Jamaica has created clientelistic relationships that enable political parties to gain political support from citizens and secure economic security for the state (Edie, 1989; Stone, 1980; Sives, 2002; Harriott, 2003; Figueroa & Sives, 2010).

Parties engage in clientelistic relationships to retain the support of the Jamaican public (Edie, 1986; Sives, 2002; Roniger et al. 2004). Following Flynn (1974, p 134), I shall define clientelism as,

‘more or less personalised relationship between actors or sets of actors, commanding unequal wealth, status or influence, based on conditional loyalties and involving mutually beneficial transactions’.

Within a political context, clientelism involves access to resources for individuals or a group of individuals in exchange for unwavering support (Roniger et al. 2004). According to Stone (1980), patrons (politicians) determine the distribution of resources in a typical clientelist political structure. In turn, the clients who are receiving these resources are obligated to return the favour by providing political support (Stone, 1980; Kurer, 1993; Charles, 2002; Figueroa & Sives, 2010).

Within a Jamaican context and other post-colonial states, where social divisions are created through implementation of a class-based system, some propose that clientelism has become an institutionalised mechanism of class control⁷¹ (Flynn, 1974; Edie, 1984; Sives, 2002).

⁷¹ This is unsurprising, given the long-standing history of clientelism during colonialism (Edie, 1984). Edie (1983) discusses ‘old clientelism’ as a feature of the plantocracy system, where the white planter (patron) would provide economic support to a black ex-slave (client) in exchange for his labour as well as political loyalty.

There are at least two types of state patronage in Jamaica, which seek to balance competing interests. The first, which takes place between the political parties (rather than the state) and the lower classes, are based on the need for material resources or some other economic good (Stone, 1980; Edie, 1984; Edie, 1989; Sives, 2002). This patronage is rooted in the need for political parties to maintain their position of power by gaining support and limiting challenges from the majority classes who aspire to be on equal standing with their patron.

It is achieved by the minimal distribution of resources to clients in a way that does not permit significant growth, but provides them with a sense of belonging and identity (Sives, 2002). This ability to provide an identity is one of the most essential features of successful clientelism within developing states (Sives, 2002). While the state focuses on satisfying the interests of the elite, the majority classes are largely denied equal access to these state institutions. As a result, the majority classes have little faith in the state and support political leaders and their parties instead. In turn, they provide support to the leaders of the political parties through the electoral process, particularly those who demonstrate dedication to the wide distribution of scarce resources (Edie, 1997).

This form of clientelism minimises class conflict in two ways. First, the shared support of political parties across classes, that is multiple class coalitions, weakens class solidarity and minimise race and class tensions between the rich and the poor (Edie, 1997). Second, it weakens the horizontal links with the lower class group, who are constantly fighting amongst each other for scarce resources and increased status. This form of patronage gives members of majority classes a political identity⁷² by feeling associated with a leader and party that has access to power, status and resources that they can depend on (and in some ways trumps the need to resolve their financial problems) (Edie, 1984; 1997; Sives, 2002). The voting behaviour as well as the long-standing rule

⁷²PNP supporters identify themselves as ‘Comrades’, while JLP refer to themselves as ‘Labourites’.

of party leaders highlights this unwavering support for political parties and their leaders. Edie (1997) notes that the majority of voters vote according to party loyalties, regardless of ideologies, policy choices or the state of the country⁷³. As a result, members of the majority classes are pitted against each other, by demonstrating unwavering support for their parties in exchange for resources. Thus, the elite maintain the status quo by containing or suppressing resistance from the underclass.

These identities come with the capacity to engage in illegal activities with impunity once they contribute to the success of the party (Edie, 1997; Figueroa & Sives, 2002). Having identified as a Comrade or Labourite, both parties have granted impunity from the use of political violence. Much of the literature on Jamaican politics highlights the link between political parties and violence (Johnson & Soeters, 2008; Morris & Graycar, 2009; Sives, 2012; Charles & Beckford, 2012; Blake, 2013). Typically, clientelistic violence is controlled by elites (Edie, 1984; 1989; Sives, 2002). This control allows political parties to fight for political patronage without posing a threat to the status quo. This use of violence was initiated within the context of pre-existing group identities.

Both political parties garnered support through their involvement with Jamaica's two major trade unions, the Bustamante Industrial Trade Union (BITU) and the Trade Union Congress (TUC) (Lewis, 2012). Once the union leaders became the leaders of newly formed political parties, its members became willing to engage in violence to ensure that '**their**' leader remained in power so that their welfare was secured (Fearon & Laitin, 2006). As early as 1944, both PNP and JLP members engaged in street conflicts with the use of stones and knives against each other (Stone, 1978; Headley, 2002; Figueroa & Sives, 2010). Manual workers from the JLP and skilled workers from the PNP in Kingston and St. Andrew engaged in violent street attacks against each other to ensure political loyalty for their party (Sives, 2002).

⁷³Over time, a trend has developed which signifies the popularity of the PNP with the majority class population and the loyalty of the minority classes to the JLP (Stone, 1978). However, the PNP has had the longest reign in office between 1989 and 2007 (18 years) (Lewis, 2012).

between 1970 and 2005, more than 22,300 cases of homicide were attributed to ‘political tribalism, gang related conflicts and reprisals’ (Government of Jamaica, 2007, p10). Harriott (2000) argues that there is an electoral effect on the prevalence of murder and shootings. That is, during election years, there is a sharp increase in these types of crimes (Harriott 1996; 2000) The 1980 election was considered to be one of the most violent elections: 889 Jamaicans were killed (153.33% more than the previous year) (Gray, 2007; Morris & Graycar, 2009; Bourne, 2012). Participation in violence allowed individuals to maintain their association with a leader and a party that gave the promise of financial security. That is, this political association gave them an identity that, unlike race and class distinctions, did not exclude low status persons further⁷⁴.

Garrisons

During the 1967 election, many of these inner city areas were turned into politically homogenous areas called garrisons as an extension of this ‘turf politics’ approach. This is reflected in the development of garrisons⁷⁵. Essentially, garrisons are inner-city housing schemes, most of which are located within Kingston and St. Andrew that were built by political parties and allocated to party supporters (See table 1.0) in exchange for political support (Headley, 2002; Sullivan, 2010;

⁷⁴ Although it has declined significantly, there is still some political violence. Between 2001 and 2005, the Jamaica Constabulary Force (JCF) stated that over 40% of the murders committed were motivated, in part, by political interests and reprisals (Gray, 2007). In 2016, there were reports of political violence during the weeks leading up to general elections. 2 men were shot and killed at a JLP rally, while 4 others were seriously injured. On the eve of elections, 38 people (including 2 children) were admitted to hospitals with gunshot and stab wounds after attending a PNP rally (CaribFlame, <http://www.caribflame.com/2016/02/violence-escalates-on-eve-of-elections-in-Jamaica/>, accessed November 10, 2017).

⁷⁵ Garrisons help to demonstrate the linkages between political parties and their involvement in violence and corruption, which, as will emerge, make the state hesitant and unable to enforce the rule of law and administer justice fairly.

Figueroa & Sives, 2010; Thomas, 2013)⁷⁶. Carl Stone was the first to describe a ‘garrison’ as a “veritable fortress where the dominant party and its local agents are able to exercise control over significant political, economic and community related social activities” (as cited in Figueroa & Sives, 2010) (See Appendix Four for list of garrisons). Since this population constitutes a large portion of potential votes, gaining their loyalty was essential for both political parties⁷⁷.

There are now 40 garrisons within the Kingston and St. Andrew area, the majority (22) of which pledge allegiance to the PNP (Henry-Lee, 2005) (See Appendix). There is limited literature that provides a typology of garrisons (Harriott, 1996; Henry-Lee, 2005; Levy, 2009; Jaffe, 2012; Blake, 2013). Levy (2009) identifies two types of garrisons: centralised and less organised. Focusing on centralised garrisons, they are more likely to be under the firm control of the JLP, and demonstrate strong inner-city leadership (Levy, 2009). Citizens are responsive to their leader’s call for order, less susceptible to changes in political allegiance and have lower levels of crime (homicide in particular) (Levy, 2009)⁷⁸. They are self-governed for the most part, meaning that they are less prone to law enforcement and state intervention and attacks from rival garrisons. Police and

⁷⁶ However, it is important to note that this provision of housing did not change the financial status of residents. For instance, Tivoli is built in one of the most deprived areas of Kingston; a majority of residents did not own their accommodation and people were either unemployed or had some type of informal employment. Party patrons were able to exploit citizens by giving them some sense of identity that symbolised the hope of change, but actually strengthened the financial disparity between themselves and inner-city citizens (Sives, 2002; Clarke, 2006; Levy, 2009). Tivoli exacerbated the lack of unity amongst the majority classes by causing feelings of resentment from PNP supporters, as their original homes were being taken away and they were denied any employment in its re-development.

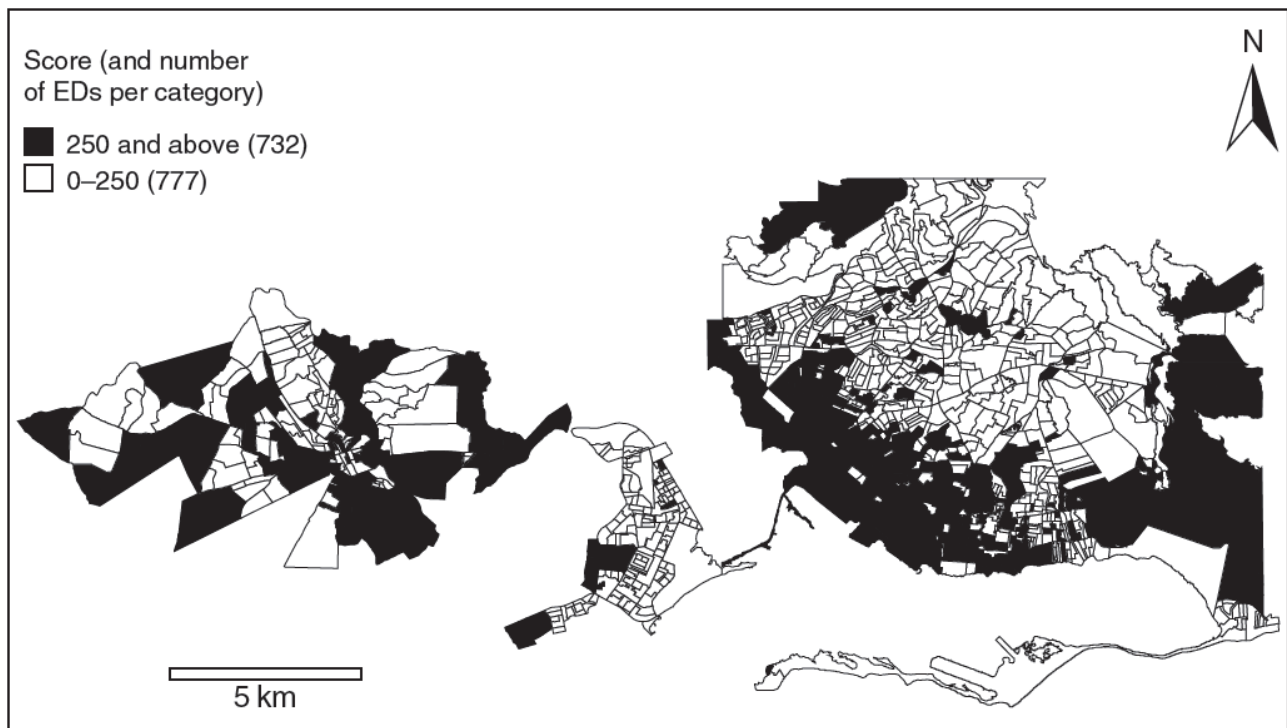
⁷⁷ As can be seen from Figure 1.1, these constituencies have a high population density. One of the main garrisons, Tivoli has 16,031 of the total West Kingston population of 39,332 (Tivoli Report, ECLAC, 2010). In addition, the 2012 JNCVS report indicates that those of a lower socio-economic status are more likely to vote than their elite counterparts.

⁷⁸ Evidence indicates that, under the leadership of Christopher ‘Dudus’ Coke (an inner-city crime boss, otherwise known as a don) the murder rate in Tivoli was close to zero (Henry-Lee, 2005; Meeks, 2011).

politicians often refrain from interfering in issues within or between these garrisons (Sullivan, 2010; Figueroa & Sives, 2010; Sives, 2012; Charles & Beckford, 2012).

All garrisons suffer from a lack of basic resources including sufficient food, access to education, security and employment (Harriott, 1996; Henry-lee, 2005; Jaffe, 2012; Blake, 2013) (See Figure 3.4)⁷⁹.

Figure 3.4 Map of Socio-Economic Status in KMR in 1991



Accessed from Clarke (2006, p425)

Within garrisons, political parties reinforce the political identity of poor Jamaicans through their gross misuse of resources for political gain. Unlike members of the upper class and upper-

⁷⁹ The decentralised garrison is less organised (Henry-Lee, 2005; Levy, 2012). It is more likely to experience periods of violence and state interventions to control these intermittent violent episodes (Levy, 2009). Decentralised garrisons are more likely to be associated with the PNP, which historically, suffers from internal tensions and does not follow a centralised approach to leadership. Consequently, they are more prone to changes in political affiliation or likely to contain smaller areas that are not loyal to the same party (Henry-Lee, 2005; Levy, 2009; Levy, 2012). For instance, August town is considered to be a PNP stronghold (Levy, 2009). However, there are sections within the garrison area that are loyal to the JLP.

middle class communities who are benefactors of individual clientelism, poorer Jamaicans often receive communal ‘pork-barrel’ benefits from their allegiance, whether it be infrastructural improvements such as access to running water and paved roads, having the option of not paying utility bills or access to employment (Kurer, 1993; Charles, 2002; Lemard & Hemenway, 2006; Figueroa & Sives, 2010; Thomas 2013). This type of patron-client exchange is referred to as ‘communal clientelism’, where communities exchange their votes for material resources (Figueroa & Sives, 2010)⁸⁰.

Within this patron-client relationship, MPs are responsible for ensuring that communal benefits are dispensed through the administration of relief programmes at the Parish Council level (Edie, 1984). These programmes provide employment for construction, gully development and holiday work, among other opportunities. Of course, preference is given to known supporters of the political party that the MP is associated with⁸¹. In this way, government officials continue the clientelistic approach by manipulating resources to ensure that constituents maintain their status at local elections as well as that of their political party during national elections.

Dons

Political parties strengthened these clientelistic relationships with garrison community members through their ties with dons (Kurer, 1993; Figueroa & Sives, 2010; Stone, 1980). Within

⁸⁰Communal clientelism is a small departure from traditional political clientelism, which is defined as a one-on-one relationship between patrons and clients, where there is a trade of material favours for votes (Charles, 2002; Figueroa & Sives, 2010)

⁸¹ It is through local government officials that political parties were able to maintain the loyalty of its constituents. Regardless of whether they were in power or the opposition, local government officials ensured that the distribution of resources was associated with their political party (Edie, 1984; 1989; Sives, 2002). Anecdotal evidence indicates that when Seaga was Minister of Finance, his constituency of Tivoli did not suffer from a lack of resources (Edie, 1989). He had relatively unlimited access to resources because of his powerful position within the government. Once the MP has demonstrated his ability to ensure that he can access funds, he is likely to be re-elected. In order for an MP and a councillor to receive grants consistently, he must be well connected within his party (Edie, 1989; Edie, 1984).

garrisons, dons are leaders of the political gangs⁸² (Clarke, 2006; Sullivan, 2010; Meeks, 2011; Sives, 2012; Jaffe, 2012; 2013; Blake, 2013)⁸³. It is not uncommon for local government officials to have informal ‘brokers’ who encourage communities to vote for a particular political party (Edie, 1984; Galvin, 2011). Typically, dons are male professional criminals who come from the garrison communities that they gain control over (Price, 2004; Meeks, 2011; Jaffe, 2012; Charles & Beckford, 2012; Blake, 2013). In the 2012 Jamaican National Crime Victimization Survey (JNCVS), 4.5% of respondents indicated the presence of a don in their community (JNCVS, 2012, p 82).

In the 1970s, while politicians were developing garrisons, criminals within garrisons began to foster relationships with influential politicians, thereby building reputations for themselves as leaders within the garrisons (Meeks, 2011; Jaffe, 2012; Charles & Beckford, 2012; Blake, 2013). The don would consult with MPs, who would then delegate the responsibility of distributing employment and contracts for construction work. Typically, dons are successful criminal bosses who are known for having strong political ties⁸⁴. In exchange for ensuring political support within the garrisons, dons receive personal benefits (Headley, 2002; Smith, 2013; Thomas, 2013; Jaffe, 2013). Dons, such as Christopher ‘Dudus’ Coke, developed legitimate businesses to work with the government and private sector (Blake, 2013). Often, politicians provide construction and security contracts to dons through their ‘legitimate’ businesses and their associates without going through

⁸² This characterises a majority of gangs in Kingston, but some gangs do not answer to a don and are without political ties, as will be discussed later on in the chapter.

⁸³ Not only do dons play a vital role in Jamaica in the proliferation of political corruption and the development of organised crime, but also in the relative success of the informal system of justice that operates within the garrisons. I return to this in the Chapters 5 and 6. In this chapter, I will highlight how their relationship with political parties prevented the state from upholding the rule of law and reduced the legitimacy of the state

⁸⁴ Not all dons are the same. I will focus on the Mega don, as the figure is of particular importance to this thesis.

the tender process. In 2001 when the local city council for Kingston and St. Andrew (KSAC) began the renovations for the downtown market area, they provided 3.1 million Jamaican dollars to the don of 'Brick Town' to provide the equipment, material and labour (Charles, 2003; Johnson & Soeters, 2008). The council arranged for dons to be responsible for security within the markets and the relocation of vendors at a monthly cost of 1 million dollars (Charles, 2003; Johnson & Soeters, 2008). Also, dons operate with impunity in the drug trade, trafficking of guns and extortion of local businesses within the KMR (Charles, 2002, Sives, 2012; Charles & Beckford, 2012; Blake, 2013). A mega don uses these businesses, including construction, sports and transportation, as a cover for the additional income from his criminal activities (Johnson & Soeters, 2008; Blake, 2013). As a result of the wealth acquired through criminal involvement and political ties, they are able to pay or coerce the community to vote for a particular party⁸⁵ (Figueroa & Sives, 2010).

Homogenous Voting

Dons pick a handful of individuals, otherwise known as 'shottas'⁸⁶, to support their activities and carry out orders (Johnson & Soeters, 2008; Blake, 2012). As early as the 1970s dons would send out their shottas to carry out door-to-door 'campaigning' for votes. According to Blake (2012), dons and their gangs ensured that people stuck to their 'right party' (Blake, 2012)⁸⁷. This use of political intimidation, violence and exploitation of Jamaicans in impoverished localities resulted in 'homogeneous voting' and other forms of electoral fraud (Johnson & Soeters, 2008; Figueroa &

⁸⁵ Ultimately, this involvement of political parties with dons has, until recently, disabled its capacity to uphold the rule of law by dictating the types of offences that are punished. That is, politically motivated crime and drug-related crimes carried out by dons were not typically addressed.

⁸⁶ Shottas are small-time criminals who carry out small non-violent crimes such as pick pocketing.

⁸⁷ During the 1993 election, 'party loyalists' came to polling stations where, conveniently, non-partisan volunteers had not shown up (Figueroa & Sives, 2003; Clarke, 2006). At that time, the Director of Elections noted blatant intimidation of staff, stuffing and stealing of ballot boxes and early closure of some polling stations to ensure that one party retained as many votes as possible

Sives, 2010; Charles & Beckford, 2010; Sives, 2012; Blake, 2013). Homogeneous voting is the process by which one party receives all the votes in a ballot box or all but ten or less votes (Figueroa & Sives, 2010). In 1993, during the local Kingston elections, 48% of the boxes returned no votes for the losing candidate (Figueroa & Sives, 2010). In 2002, the PNP representative, Omar Davies won a seat in the St. Andrew South Eastern community with 95% of the votes. Henry-Lee (2005) notes that within three garrisons in the KMA, representatives have been selected with 76% or more of the votes for 14 years.

The Rise of the Don and Organised Crime

The literature on Jamaican garrisons discusses the effect that neoliberal reforms had on the role of the don (Sives, 2002; Johnson & Soeters, 2008; Jaffe, 2012; Blake, 2013; Habers, Jaffe & Cummings, 2016). I will now discuss how this loss of economic stability facilitated the transition of the don from a ‘broker’ of governance to a ‘partner-in-governance’ (Blake, 2013), where dons became responsible for state-like responsibilities within garrisons, including welfare assistance. Later on, I will consider the extension of those responsibilities to the provision of protection and administration of justice (Johnson & Soeters, 2008; Jaffe, 2012; Blake, 2013; Habers, Jaffe & Cummings, 2016).

When large portions of the population withdraw their support from state institutions, it weakens the legitimacy of the state and limits the capacity to govern. The Manley-Seaga era caused a period of economic downturn in Jamaica, which left the government unable to carry out state responsibilities and destabilised the inner-city communities. A breakdown in the internal clientelistic relationship between the government and the majority classes often occurs when the resources being distributed declines or when the state can no longer afford to provide the resources altogether (Sives, 2002). Under the Manley administration, there was a withdrawal of foreign

investment, particularly from the US. Multinational corporations pulled out from the Jamaican economy (Edie, 1984; 1989; Sives, 2002; Brown, 2013). U.S capital sources cut their investments by over 30% (Edie, 1989). Bauxite companies filed a suit with the WB International Centre, contesting the legal validity of the levy (Edie, 1989). This withdrawal of investment had a devastating effect on the economy. Exacerbated by the international oil crisis of the 1970s, the withdrawal of investment meant that there was a failure of the state to provide resources to the majority classes, including garrison residents (Edie, 1989; Sives, 2002; Brown, 2013). The Jamaican government was forced to take a loan from the IMF to address this severe economic downturn, which came with conditionalities including an increase in interest rates as well as devaluation in order to improve the export sector (Brown, 1981; Johnston & Montecino, 2011; Johnston, 2015).

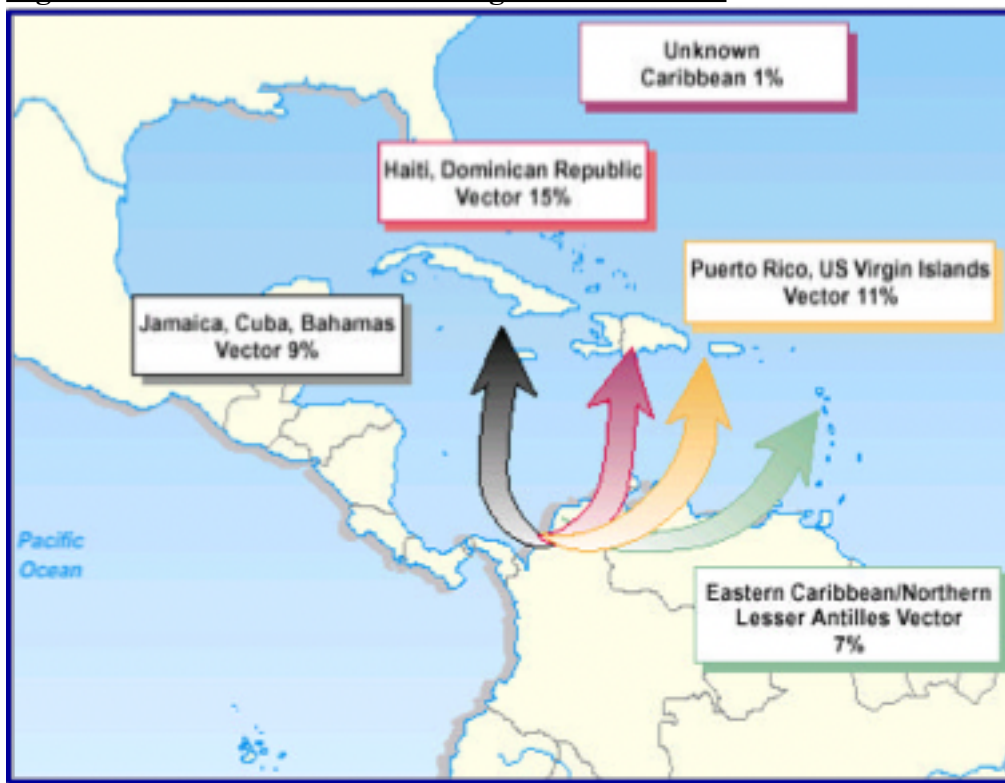
Although the continuation of the neoliberal policies by the JLP gained great favour with the local elite and financial institutions, SAPs had a negative effect on poor young men and women (Headley, 1996; Harriott, 1996; 2000)⁸⁸. Gordon (1987) notes that during periods of economic stagnation, people are less likely to experience upward mobility through conventional routes. It follows that during these periods, when the Jamaican government was unable to provide resources, both the working class sought alternative means of accessing them. Case studies from other jurisdictions indicate that informal governance actors, such as paramilitaries and criminal gangs often take on state-like responsibilities in response to the unequal access to resources and protection (Johnson & Soeters, 2008; Habers, Jaffe & Cummings, 2013). In the case of Jamaica, the poor who

⁸⁸ Young men between the ages of 15 and 29 suffered from unemployment and lack of access to legal pathways to self-sustainability. Male participation in the labour force fell from 84% in 1985 to 74.6% in 1993 (Harriott, 1996; 2000). Between, 1970s and the 1980s, only one-fifth of all new job seekers were able to find employment (Headley, 1996). Wages were amongst the lowest in the region, and with high male unemployment rates, many females became the breadwinners of their households. With a disproportionate number of all inner-city households being headed up by single mothers, many Jamaican women were forced to migrate in order to be able to earn enough to provide for their families (Jaffe, 2012).

suffered from violence, a lack of resources and inaccessibility of justice to poor found recourse through the dons.

Dons — who had amassed significant wealth from their ability to participate in these illegal activities with impunity, took over these welfare and security responsibilities from the state within their garrisons (Johnson & Soeters, 2008; Jaffe, 2012; Blake, 2013; Habers, Jaffe & Cummings, 21016).

Figure 4.0 Flows of Narcotics through the Caribbean



Accessed from Griffith, 2001.

As a result, the state became dependent on dons and their associates to continue the patron-client relationship within the garrisons. Because of their strong political ties, dons became involved with marijuana trafficking and gun trade without fear of prosecution (Headley, 1996; Headley,

2002; Albuquerque & McElroy, 2007; Scott, 2007; Blake, 2012)⁸⁹. This allowed dons to become independent of their political ties (Blake, 2013; Jaffe, 2012). With the assistance of their political associates, dons, such as Lester Coke and Claude Massop, had increased their wealth exponentially. They had begun travelling across the U.S and Europe to set up drug networks; developing operations for the shipment and sale of cocaine and marijuana in major cities such as Miami and New York (See Figure 4.0) (Gunst, 1995; Headley, 1996). In this way, dons became both recipients and agents of clientelism (Harriott, 2002; Charles, 2002; Lewis, 2012). Many dons took on state responsibilities for their garrisons, such as providing schoolbooks, payment of utilities and employment for young adults (Henry-Lee, 2005; Johnson & Soeters, 2008; Leslie, 2010; Lewis, 2012; Blake, 2013). Garrison residents began to view dons as a relatively reliable source of support and protection (Charles, 2002; Leslie, 2010; Sives, 2012; Jaffe, 2012)⁹⁰.

This rise of the don had an effect on the capacity of the government to address crime. Garrison residents viewed dons as a reliable source of support and protection (Charles, 2002; Leslie, 2010; Sives, 2012; Jaffe, 2012). Dons such as Christopher ‘Dudus’ Coke were popular for the amount of assistance they provided to garrison community members and for making their garrisons more structured, organised and impenetrable to police and rivals from other garrisons (Johnson &

⁸⁹ By the late 1970s, dons expanded their wealth by participating in the transnational narcotics and gun trade (Johnson & Soeters, 2008; Blake, 2013; Jaffe, 2013; Jaffe, 2015). At the time, the illegal drug trade was one of the few stable sectors that provided a regular income in contrast to the failing economy (Harriott, 1996; 2003; Sives, 2002; Clarke, 2006). By 1990, it was estimated that Jamaican professional criminals had earned 8% of the 8.8 billion dollar U.S cannabis trade and profited substantially from the 18 billion dollar cocaine trade (Harriott, 1996; 2003).

⁹⁰ Throughout the 1980s, dons continued to deliver these state responsibilities because of their new lucrative careers in narcotics, organised crime, extortion and partisan mobilisation. Subsequently, the literature notes an increase in gang welfare, where children were becoming part of gang culture; as political enforcers or gun ‘couriers’ (Harriott, 1996; Johnson & Soeters, 2008; Jaffe, 2012; Sives, 2012). In 2000, youth under the age of 25 were responsible for 51% of the murders and 56% of all major crime in Jamaica respectively (WB, 2007). In 2002, the same group was responsible for 80% of all violent crimes, 75% of all murders, the rate of juvenile cases and 98% of all crimes committed in Jamaica (Smith & Green, 2007).

Soeters, 2008; Figueroa & Sives, 2010). The JNCVS report (2012) found that 43% of respondents within garrison communities found that the dons were doing positive things for the community (Leslie, 2010; JNCVS, 2012). Thus the state became dependent on the dons to control garrisons. However, because of the threat they pose to democratic stability, dons are able to take part in governance by dictating the types of crime the state can punish and essentially ruling over the garrisons. This increased involvement of dons in governance has, in some ways deepened the overlap between the political parties and criminal activity.

Dons remain reliant on their political connections for impunity from their involvement with narcotics and other related crimes (Charles, 2002, Charles & Beckford, 2012; Sives, 2012; Jaffe, 2012; Blake, 2013). Even though there has been a decrease in political violence since the 1980s, the state is still dependent on dons and gangs for political patronage and supports their ability to provide welfare assistance to the garrisons (Sives, 2002; Clarke, 2006; Johnson & Soeters, 2008; Charles & Beckford, 2010; Levy, 2012). At the request of the dons, MPs continue to provide contracts for the gang members and other individuals within the garrisons (Levy, 2009). Political parties and other elites have solicited many gangs to provide extortion or bribery services within and outside of the garrisons (Harrison, 2002). Even state agencies hire gang enforcers to provide security (Harriott, 2007).

Clientelism Continued: Appeasing the Elite

I described the first type of patronage as an exchange of resources for electoral support between the lower classes and political parties. The second is a relationship between parties and the local elite, where they are given access to state machinery, law enforcement, nepotism as well as the reprieve from rules and regulations that hamper economic progress. In turn, they lend their financial

support to state institutions. Political parties that are in power will ensure that they support the elite's interest in maintaining a majority of wealth in the country.

There is limited literature on the elite population in Jamaica as it relates to their political economy and the consequences of that power (Holzberg, 1980; Edie, 1989; Jaffe, 2012; Carnegie, 2014). As mentioned previously, the elite population of Jamaica can be identified in accordance with wealth, occupational status, education and race (Edie, 1984; Sives, 2002; Edie, 1989; 2011; Harriott et al. 2012; Carnegie, 2014). The elite are central to this discussion of clientelism, since, in many ways they are the 'oil' that keeps the political machine running. Historically, economic elites in Jamaica began as a few families (estimated 21 families) that occupied influential and lucrative positions in successful commercial, financial and industrial businesses that contribute to the Jamaican corporate economy⁹¹ (Holzberg, 1980; Edie, 1984). However, the period of economic expansion during the 1970s and the subsequent heterogeneous nature of social classes mean that black middle-class individuals now fill most positions within the government. However much of the control remains within economic elite community who dominate leadership positions. In 1977, the Jamaican economic elite filled 125 (of a total of 219) of all existing corporate directorships and 70% chairmanships (Edie, 1984). For instance, two of the wealthiest families in Jamaica, the Hendricksons and Matalons, have occupied positions in the private sector and government agencies under both party administrations (Edie, 1984; 1989). Members of the Matalon family are represented in the hotel industry, the National Development Agency and the Jamaica Bauxite Institute (JBI) (Edie, 1984).

In the clientelistic relationship with elites, the state is both the client and the patron at different times (Edie, 1984; 1989; 2011; Sives, 2002). The state acts as the patron by making

⁹¹ It is only since the 1990s that the upper and middle class groups have come to include a number of black wealthy individuals or families (Stone, 1978; Carnegie, 2014).

political decisions that support and promote the interests of the economic elites (Edie, 1984;1989; Sives, 2002). The state has access to public resources that contribute to the success of the economic elite (Edie, 1984; 2011). The state supports these interests by placing members of the economic elite into influential positions within government corporations and state bureaucracies, where they have access to state power⁹².

In turn, elites give support to political parties through generous financial contributions. They fund election campaigns and the distribution of resources to appease the majority classes (Edie, 1984;1989; Sives, 2002). Without their contribution, the economy would have destabilised and the potential for class conflict increased. In exchange for being given a stake in the Bauxite industry by Manley, some resources were used to appease the majority classes that were gaining directly from the levees imposed through the creation of social programmes such as the Project Land Lease⁹³ and Special Employment programme⁹⁴ (Edie, 1989).

By holding these influential positions the local elite is able to influence policy choices that protect their interests in business, agriculture and tourism on a national scale (Edie, 1984; 1989;

⁹² For instance, Joseph Matalon is the chairman of the main Jamaica investment holding company, the British Caribbean Insurance Company, the Development Bank of Jamaica, President of the Private Sector Organization of Jamaica. Matalon was appointed as director of the JBI and ensured that other elites aligned with the PNP were given leadership positions within the (PSOJ) and a director of the Gleaner Company (national newspaper) and Bank of Nova Scotia in Jamaica. Also, he sits on a number of government committees to advise the state on financial and economic matters (Persaud, 2001; <https://www.panamericanworld.com/en/article/8-wealthiest-and-most-influential-people-jamaica>, accessed November 13, 2017).

⁹³ The Project Land Lease programme leased small plots and gave credit to small farmers, which contributed towards reducing their costs. However this programme also became a political tool as a majority of these opportunities were given to PNP party supporters (Edie, 1989).

⁹⁴ The Special Employment Programme sought to address unemployment by giving jobs; mostly in labour, such as road construction, cutting trees and street cleaning (Edie, 1989). Typically the grants for this programme were given to party supporters and the local government level who in turn, gave jobs to PNP loyalists (Edie, 1989).

2011; Daley, 2014). The socialist agenda of Manley did not benefit the local elite. Initially, his attempt to impose bauxite levys on North America was supported by the private sector. Claiming a share of a sector that was completely foreign owned benefitted their business interests. Meyer Matalon was appointed as director of the JBI and ensured that other elites aligned with the PNP were given leadership positions within the organisation (Edie, 1989). However, once Manley's agenda shifted to a redistribution of wealth and a refusal of foreign income, a majority of local capitalists and businessmen opposed Manley and the PNP government (Stone, 1977; Stephans & Stephans, 1983). In an effort to create a mixed economy that was no longer dominated by the private sector, the government sought to gain shares in cement, flour (which were previously owned by 2 of the elite families) and other local enterprises. They imposed restrictions on local business for imports of foods, drugs and timber. In response, local elites withdrew their capital from Jamaican banks as well as investment in local businesses. Private sector groups opposed these decisions by launching organisations such as the PSOJ and Jamaica Chamber of Commerce, which collaborated with the JLP to sway public opinion against the PNP. The withdrawal of the support of the local elite, the emigration of many capitalists and the economic downturn led to the loss by PNP of the election in 1980. PNP won 9 seats compared to 51 seats for the JLP (Edie, 1989). On the other hand, when the JLP gave primacy to elite interests and foreign investment, the local elites provided financial support. In 2007 election, when the JLP won, much of their support came from private donations (Edie, 2011). In turn, the JLP created the Generation 2000 (G2K), which brought together young corporate elites such as Daryl Vaz⁹⁵ to become the corporate leaders of the JLP and continue to influence policy (Edie, 2011).

⁹⁵ Daryl Vaz is the son of the former director of the Jamaica Manufacturers Association and former Minister of Industry and Commerce. He is the founding president of the Jamaica Used Car Dealers Association and former Minister of Information and Technologies (2009-2012) (<http://jis.gov.jm/ministers/daryl-vaz/>, accessed November 16, 2017).

Clientelism continued: International stakeholders and the state

A weakness of Stone and Gordon's discussions is the lack of focus on the clientelistic relationships between the international stakeholders and the Jamaican government (Edie, 1997). They fail to deal with an essential element of the policymaking process; the influence of funding by international stakeholders on policy prescription in developing states like Jamaica. I highlight the shift towards the policymaking that caters to the interests of the developed states. I propose that these policies maintained interests of the local elite, while negatively affecting the state's relationship with the majority classes due to pressure to implement programmes that attacked the role of dons as partners-in-governance. Moreover, these policies fail to consider the contextual issues, such as public distrust of the state, the lack of professional and financial resources and other context-specific issues. Political parties are not the only groups interested in the maintenance of the status quo and subjugation of the lower classes (Holzberg, 1980; Edie, 1984; 2011; Sives, 2002; Clarke, 2006). The need of the elite community to preserve wealth is an incentive to fund the patron-client system in place between the political parties and garrisons, as it keeps the lower classes from demanding more resources from the state (Edie, 1984; 1989; 2011; Sives, 2002).

There is a history of clientelistic relationships with IFIs and developed states⁹⁶ As I will describe, there are clientelistic relationships between the state and the international stakeholders, where the former is the client and the latter is the patron. The need for the state to please the conflicting interests of the inner-city population, the local elites and these international stakeholders, diminishes the legitimacy of the state by reducing its ability to enforce the rule of law. The state's financial dependence on international donors gave those donors illegitimate influence over justice policy choices.

⁹⁶ Edie (1997; 2011) notes that Stone (1976;1977) fails to consider the external influences on Jamaican society.

Donor Countries

While the role of the state shifts between patron and client in its relationship with the economic elite, the role of the state does not shift with respect to the international donor community (Edie, 1984; Edie, 1989; Sives, 2002; Harriott et al, 2012). The literature on developing countries notes the tendency for them to comply with the policy preferences of developed states with whom they have a long-standing history (Biddle & Stephans, 1989; Sives, 2002; Weis, 2004; Edie, 2011; Daley, 2014; Graham, 2017). In return, these developing states receive preferential treatment and funding to implement these policies. By having influence over policies, dominant states develop long-term influence on developing states; protecting their interests by creating a consensus across jurisdictions and minimising potential defiance.

Historically, the policy choices of developed states have imposed, and later on indirectly shaped the policy prescription of an economically dependent Jamaican government (Edie, 1984; 1989; Sives, 2002; Weis, 2004). The Jamaican government has on-going funding relationships with the US, Canada and the U.K (to a lesser extent) (Biddle & Stephans, 1989; Edie, 1989; 2011). These states are Jamaica's most lucrative trading partners⁹⁷; (ii) the sites of migration for most Jamaicans who live outside of Jamaica and (iii) amongst the wealthiest nations in the world and provide the most significant aid and foreign investment to Jamaica (Edie, 1989; Dunn & Mondesire, 2002).

During the 1950s and 60s, Seaga became one of the greatest allies of the US. Under his administration, it adopted pro-U.S. position on relations with Cuba and Grenada by breaking off relations with the former and defending the U.S invasion into the latter (Edie, 1984; Libby, 1990).

⁹⁷ In the 1960s and 70s, Jamaica imported more than 60% of what was consumed in the country, including capital goods, food, manufacturing goods as well as raw materials (Biddle & Stephans, 1989).

Also, Jamaica supported nuclear weapon reductions with verification and supported the U.S position on cold war issues (Libby, 1990; Sullivan, 2006). He was portrayed as a ‘Harvard-educated’ businessman who had a commitment to democracy (Persaud, 2001). In response to Seaga’s choice of pro-U.S policies, the U.S committee on Jamaica extended resources to further foreign investment. Both political parties sought foreign investment in bauxite and tourism through import-substitution policies (Biddle & Stephans, 1989; Edie, 1989). The Reagan administration established the Caribbean Basin initiative, which allowed duty-free entry of Caribbean goods and promoted investment through tax incentives and removal of barriers to U.S investment (Biddle & Stephans, 1989). Most importantly, it increased aid from 14.6 million to 140.7 million in 1982⁹⁸ Under Seaga, the Jamaican government was able to receive extensions on their IMF agreements and received a raise in lending by 450% of the quota (the maximum allowed) under far more lenient conditions than Manley.

By developing these funding relationships with the donor countries, Jamaica was able to maintain the class structure; particularly with regard to the maintenance of the middle strata. Also, the influx of foreign investment prevented an uprising of the majority classes. In 1974, a similar survey found that elites rated Jamaican self-interest as lower than western nations (Persaud, 2001). As a result, the state benefitted from both donor countries’ and the local elite’s funding of the clientelistic relationships of the state and majority classes. While this helped to maintain the stability of the state, it certainly diminished the state’s capacity for self-rule.

Historically, there is evidence of semi-coercive policy transfer having taken place in Jamaica, particularly throughout the 80s. Any refusal by the Jamaican government to adhere to the interests of these donor countries has had grave consequences. Manley’s attempt to become

⁹⁸ As will be discussed, Canada played a significant role in the most recent justice reform efforts and the RJ policy.

independent of foreign investment resulted in severe backlash from the US Both the local (controlled by the elite) and U.S media began to paint Jamaica in a poor light (Persaud, 2001). The Gleaner, which held a conservative JLP view at the time, published editorials that undermined Manley's government. Subsequently the PNP charged the newspaper with attempting to overthrow the government. The international newspapers such as the *Miami Herald*, *Newsweek* and the *World Report* wrote about the political violence in Jamaica and Manley's ties to communism, Anti-Americanism and dictatorship (Persaud, 2001)⁹⁹.

Most relevant to this thesis is the long-standing relationship between Jamaica and Canada (which began in the 1950s)¹⁰⁰. Between 1981 and 1992, Canada gave the second highest level of aid-funding to Jamaica (278 million US dollars) (Dunn & Mondesire, 2002). The main focus of this funding, which was given through the Canadian International Development Agency (CIDA)¹⁰¹ was: (i) poverty reduction, (ii) good governance, (iii) multilateral cooperation, (iv) private sector development, (v) the environment, and (vi) gender equality. CIDA has field offices in Jamaica as a means of strengthening collaborative efforts as well as officers stationed in Kingston (Dunn & Mondesire, 2002). As part of its aim of reducing poverty, CIDA has contributed significantly to security in Jamaica (Baranyi & Dosman, 1991). In 1980 an agreement was made for Caribbean police personnel to receive training at the Canadian Police College in Ottawa.

⁹⁹ The literature does not indicate a similar level of coercion in the relationship between Canada and Jamaica. However, there is some concern regarding the sincerity of Canada's stated goals to reduce poverty in developing states (Baranyi & Dosman, 1991; Cameron, 2007).

¹⁰⁰ For instance, in 2001, 71% of Canadians claimed to be of Jamaican origin. In Toronto, they make up (150,000) 3% of the population. Acosta (2005) notes that between, 1990 and 2002, 229 and 940 US million dollars are sent back to Jamaica from Canada in remittances.

¹⁰¹ CIDA is a government agency that provides sustainable development assistance in developing countries in order to reduce poverty (<http://www.international.gc.ca/>, accessed April 10, 2017).

In exchange for this funding support, Jamaica has supported Canada on a number of regional initiatives, including the ratification of the Landmines convention, its foreign affairs interest in Cuba and Haiti as well as support for its bid for a seat on the UN Security Council (Dunn & Mondesire, 2002). Also, Jamaican imports from Canada are significant including seafood, paper, medicine and consumer products; notwithstanding high tariffs on their exports to Canada. However, as will be discussed, I propose that the current funding relationship between Canada and the Jamaican government is not coercive; instead the Jamaican government engages in ‘opportunistic’ policy transfer, where policy is adopted voluntarily from a jurisdiction in order to take advantage of funding opportunities from the donor.

IFIs

In addition to funding from developed states, Jamaica and other Caribbean countries receive funding from multilateral financial institutions (IFIs), such as IDB, WB and IMF (Burnside & Dollar, 1977; Edie, 1984; Sives, 2002)¹⁰². These organisations pool money from funds from multiple countries in order to provide aid to recipient countries (Milner & Tingly, 2012). Historically, a clientelistic relationship exists between IFI’s and the Jamaican government. That is, these organisations typically provide loans under a set of conditions, such as imposition of interest rates and the implementation of policies and programmes that often limit their capacity for economic growth¹⁰³. This coercive policy transfer is seen in the case of the IMF and the agreements

¹⁰² Although IFIs such as IDB contributed to the national RJ programme, their impact on the direction of the policy was fairly limited. However as will be discussed, as an international organisation, their financial interests were given priority throughout the policymaking process

¹⁰³ Fleck & Kilby (2005), after examining the geographic distribution of WB lending to 110 countries between 1968 and 2002, found that U.S interests were a significant influence on allocation of funding. These U.S interests were primarily related to geopolitics (particularly during the Cold War) and commercial interests (Fleck & Kilby, 2005). In Jamaica, the implementation of these SAPs was based on the neoliberal agenda of the US Dreher & Jensen (2003) note that countries that align themselves with U.S interests, face fewer conditions when entering into IMF agreements. This is highlighted by the leniency of the IMF to the Seaga administration.

both Manley and Seaga entered into, which imposed a series of restrictions as well as the implementation of SAPs (Burnside & Dollar, 1977; Milner & Tingly, 2012).

The policy literature indicates that these imposed policies are often consistent with the interests of developed states, rather than the recipient country (Burnside & Dollar, 1977; Maizels & Nissanke, 1984; Fleck & Kilby, 2005). Under the leadership of Seaga, the JLP administration embraced this neo-liberal agenda that had been set by the IMF (Edie, 1989; Brown, 2013; Sives, 2002; Edie, 1984). In doing so, it attempted to rebuild the relationships with North America and encourage the return of local and foreign investment. In return, Seaga was able to renegotiate the IMF agreement and was even granted leniency when it failed to meet the requirements at the first assessment of their agreement (Edie, 1989; Brown, 2013; Sives, 2002; Edie, 1984).

However, the IMF agreement was particularly detrimental to the economy and the welfare of the majority classes, which resulted in the Jamaican government continuing to borrow from these agencies¹⁰⁴. The first IMF agreement provided the Jamaican government with conditionalities for their annual fiscal budget, including public sector wage freezes, increase in interest rates and taxes as well as devaluation in order to improve the export sector (Brown, 1981; Johnston & Montecino, 2011; Johnston, 2015). This and other austerity measures led to the devaluation of the Jamaican dollar (from \$1.78 to 1 US dollar to \$5.50 to 1 US dollar) and an overall lower standard of living for Jamaicans. By 1983 the cost of living had increased by 18%. Paying these loans has consumed much of the Jamaican fiscal budget for several years. In 1991, Jamaica's debt represented 194% of its total budget (Brown, 1981; Johnston & Montecino, 2011; Jaffe, 2012; Johnston, 2015).

Ultimately, compliance with the IMF appeased the local elites, but left the PNP government to deal with the disgruntled society lacking economic freedom. More than 77% of Jamaicans were

¹⁰⁴ Since 1976, Jamaica has had continuous agreements in place with the IMF (Jaffe, 2012; Brown, 1981; Johnston & Montecino, 2011; Johnston, 2015).

unable to access basic resources (Headley, 1996). In 2010, the debt represented 129% of the budget (Johnston & Montecino, 2011). Young men between the ages of 15 and 29 continue to suffer from unemployment and lack of access to legal pathways to rise in social status. Male participation in the labour force fell from 84% in 1985 to 74.6% in 1993 (Harriott, 1996; 2000). Between 1980 and 1989, only 40,000 of the 450,000 individuals that comprised the 16 to 24 year old Jamaican population were able to attain some skill or education beyond elementary school (Headley, 1996). This meant that even when jobs were available, many were not capable of filling those positions. This overall neglect of the majority classes resulted in resentment against the minority classes in Jamaica, who continue to access state machinery for personal gain (Edie, 1984; 989; Sives, 2002; Brown, 2013).

However, the Caribbean policy literature indicates that since the 2000s, there is an availability of funding that is consistent with the needs of the Jamaican context and other developing states. Donors and IFIs that have been historically stringent and focused on economic benefit, expanded their scope to a wider range of issues (Dani & De Haan, 2008). For instance, donors such as the IMF and World Bank have become more amenable to social sector spending. More focus is given to financing public services, such as health and education as well as improved governance (Gough, 2008). Wynter, Hardee & Brown (2004) note the availability of adequate funding from international and local donors for adolescent reproductive health. In fact, they discuss the willingness of donors to respond to the Jamaican context and the need amongst adolescents for reproductive health services, rather than coercing the Jamaican government to focus on a particular issue. Within environmental policy, Scobie (2016) identifies donor funding as one of the driving forces behind policy choice in Caribbean States and the tendency of regional leaders to prioritise climate change in order to obtain funding. Thompson (2007) speaks to the ways in which Jamaica and other developing states strategically use international donor programmes to implement

information technology programme. Dani & De Haan (2008) note the shift in the approach of donors to policymaking across jurisdictions also. In the case of implementing social policies that address structural inequalities, they discuss a shift towards a more participatory approach in reducing poverty, as highlighted by increased empowerment of poor communities, increased partnership between donors, states civil society and academic institutions as well as more relaxed funding conditions (Dani & De Haan, 2008). This shift in the approach to funding and relationships between donors and recipient states will be exemplified in the case of justice policy in the following chapter.

Conclusion

In this chapter, I have provided an overview of the political, economic and social landscape of Jamaica. In particular, I have focused on the state's relationship with donors as a response to its clientelistic relationships with the majority classes and the local elite. The politics literature on Jamaica highlights the historical use of policymaking as a tool to appease both the masses, the local elite as well as the IFIs and country donors. However, I note the increasing trend of donors to encourage a much contextualised and relaxed approach to policymaking and lending. Chapter 4 will continue this discussion by highlighting the relationship between Canadian donors and justice policy as an example of the shift in donor approaches to funding small developing states. As a result, Chapter 4, will point to the opportunity for change to take place within the political, economic and cultural context that I have described here in this chapter, particularly as it relates to justice reform and crime prevention.

Chapter 4: A Historical Shift and its Effect on Justice Policy

In the last chapter, I discussed the historical context of Jamaica with regard to class, politics and policymaking. In this chapter, I focus on justice policymaking in Jamaica. In doing so, I propose that there has been a shift from coercive policy transfer to ‘opportunistic’ policy transfer where the Jamaican government adopts policies of developed states without coercion, in order to take advantage of an opportunity to secure funding relationships with donor countries and give the appearance of being responsive to crime. As will be discussed, the exercise in RJ policymaking undertaken by the Jamaican government is an example of opportunistic policy transfer, which I propose, leads to inappropriate transfer.

Jamaican Justice Policy

As discussed, there is a history of developed states influencing Jamaican policy. With regard to justice policy, international stakeholders have contributed significantly to the funding of justice policymaking (Robotham, 2003). As a result, both donor countries and IFIs have coerced multiple Jamaican administrations to adopt policies that benefit their jurisdictions, rather than the Jamaican context. That is, the Jamaican government has often engaged in inappropriate semi-coercive policy transfer. For instance, Monahagn (2015) considers the impact of global governance meetings as a site for policy transfer of crime policy. He criticises the G8 meetings¹⁰⁵, which are viewed as an opportunity for the US to place pressure on the Global South to implement policies favourable to their own interests (Monahagn, 2015). Also, financial institutions such as IDB and IMF, which are controlled by developed states, are more inclined to provide funding for projects that transplant policies from the developed to the developing world (Dolowitz & Marsh, 1996; Spiller et al. 2003).

¹⁰⁵ G8 is a political forum where heads of state from 8 countries (Canada, France, Germany, Italy, Japan, Russia, the UK and the US) meet to discuss a range of political issues such as terrorism and aid for developing countries.

This places pressure on developing nations to adopt external policies, regardless of their differences between them and recipient countries.

The need for financial support meant that the state acquiesced to semi-coercive policy transfer. As noted, crimes committed by dons, such as drug trafficking, gun crime and fraud had substantive impact on developed states including U.S, Canada, and the U.K since the 1970s. Between 1987 and 1988, The U.S reported that between 300 and 400 homicides could be attributed to Jamaican drug gangs (Headley, 1996). A vast number of deportees from the UK, USA and Canada associated with drug crime were from Jamaica; indicative of the expansive nature of the drug trade and its effect on crime in other jurisdictions. In 1993, 70% of all deportations from the UK were drug related and 9% were related to illegal gun possession (Harriott, 1996). At the end of 1996, over 6000 persons had been deported for drug-related offences (Albuquerque & McElroy, 2007).

As a consequence, the focus of donor states became that of addressing the crippling of dons' power and gang crime in Jamaica. There was concern of backlash if Jamaica did not adhere to the extradition agreement for Dudus, one of the most powerful dons in Jamaica; its international reputation would be tarnished and its funding relationships would be compromised (Robotham, 2003; Lewis, 2012). For instance, international HR organizations and governments have publicised the Jamaican justice system as weak and ineffective (Wolfe, 1993; Amnesty International, 2001; 2003). In 2000, the U.S. State Department HR Report highlighted a number of justice related issues, including lack of accountability within law enforcement and correctional services, lack of access to justice and issues regarding gender-based violence, such as sexual harassment by the police and increasing reports of rape (U.S. Department of State, 2000). In 2010, the U.S. State department encouraged the adoption of severe legislation to criminalise participation in organised criminal gangs and requested that the Jamaican government demonstrate its willingness to address corruption

(Sullivan, 2010). In 2014, the Jamaican government passed a SOCA (2014) or 'Anti-Gang Act', which makes minimal distinction between types of gangs and criminalises a number of non-violent behaviours thought to be associated with gang involvement such as wearing tattoos and the use of graffiti and songs related to gang life. SOCA (2014) imposes a sentence of up to 20 years for persons who are convicted of these crimes (Leslie, 2010; Levy, 2012). Much of its emphasis is placed on punishing gang leadership, membership and assisting with gang 'activities' ranging from drug trafficking to exportation of scrap metal and forgery (GOJ, 2013). Under the 2014 SOCA, the Jamaican government has implemented a number of zero-tolerance responses to minor offences and grants discretion to law enforcement to punish public order offences such as loitering¹⁰⁶. Since the extradition of Dudus, the U.S government has praised the cooperation of the Jamaican government with its Drug Enforcement Agency (DEA) and continues to support Jamaica's efforts through the provision of training of law enforcement and financial resources (Leslie, 2010; Levy, 2012). The U.S. Marshals Service has a regional office in Jamaica that provides training and equipment to the Jamaica Fugitive Apprehension Team (JFAT) (Sullivan, 2010). In 2009, 15 drug traffickers were extradited to the US for prosecution (Sullivan, 2010).

Consequences of Semi-Coercive Policy Transfer

Policy transfer is an attractive option for developing states, since it speeds up the slow and uncertain reform process (Llewellyn & Howse, 1997; Barrows, 2014). The trend of adopting policy from developed states is predicated on the notion that best practice in one jurisdiction can be applied to another. This is the idea that there is potential for developing a 'one-size-fits-all' model

¹⁰⁶ Some effort has been made to prevent gang crime by the implementation of prevention programmes for juvenile offenders and tackle underlying issues of poverty and unemployment for adults (Government of Jamaica, 2007). For instance, the Child Diversion programme, which is in its pilot stages, aims to divert juvenile offenders and at-risk youth from incarceration and the criminal justice system as a whole, in order to reduce the potential for their involvement with gangs (CSJP, 2008; Government of Jamaica, 2013; MOJ, <http://moj.gov.jm/programmes/child-justice>, accessed October 17, 2016).

that is effective in reducing crime regardless of differences in political, social, legal and economic context (Common, 1999; Spiller et al. 2003; Jones & Schoburgh, 2004; Schoburgh, 2007).

International approaches are adopted readily within the Caribbean to counteract this perception and ‘keep up’ with developed counterparts. In adopting these ‘best practice’ policies and approaches, the Jamaican state wishes to improve its credibility and maintain positive relationships with their funding donors (Spiller et al. 2003; Jones & Schoburgh, 2004; Schoburgh, 2007; Tennant & Clayton, 2010; Steinberg, 2011). However, the implementation of these policies has led to the failure of the Jamaican government to address crime effectively, since it has often adopted policies that address problems of the developed states without considering the impact on the Jamaican context.

Due to the limited focus on process, there is little discussion of the reasons that penal policy transfer has failed in Jamaica (Jones & Schoburgh, 2004). The JJSTRF (2009) states that the relationship between donors and justice reform has been largely unexplored. Many have made recommendations for future policy attempts to consider context, such as the lack of professional and financial resources and the nature of the political environment (Headley, 2001; Harriott, 2002). However, available evidence indicates that many adopted justice policies adopted are not suitable for the Jamaican context (Allen, 1997; Headley, 2002; Jones, 2003; Jones & Schoburgh, 2004). Jamaica has failed to incorporate key aspects of policies from the donor countries or consider the differences between it and donor states in relation to a range of issues, such as political contexts and access to resources.

With the Anti-Gang Act¹⁰⁷ yet to take full effect, the literature raises concerns regarding the potential effectiveness of this type of gang-suppression legislation (Bjerregard, 2003; Cheng, 2003; Hofwegen, 2009; Leslie, 2010). Despite its success in other countries, a 1998 study conducted by the Ministry of National Security (MNS) indicated that gang suppression legislation might not be an effective solution to the issue of crimes within *a Jamaican context* (Leslie, 2010). These policies have not had a significant effect on crime reduction in Jamaica¹⁰⁸.

The continued inappropriate policy transfer has had a negative effect on the state's relationship with the majority classes. The Jamaican government had to then choose between prioritising the interests of its international funders and local 'partners-in-governance' (Edie, 1984; Jaffe, 2012; Figueroa & Sives, 2012). By attending to the needs of the donor states to address organised crime, the state would violate its patron-client agreement with dons, who benefit from the state's immunity and minimal interference, thereby diminishing public trust. For instance the state demonstrated hesitation about extradition because of its potential to expose the corrupt activities of politicians is compounded by the response of the garrisons. Without satiating them with improved access to state resources and justice, many garrison communities' protest against these attempts to

¹⁰⁷ This legislation makes minimal distinction between types of gangs and criminalises a number of non-violent behaviours thought to be associated with gang involvement such as gang tattoos, the use of graffiti and songs related to gang life and imposes a sentence of up to 20 years for persons who are convicted of these crimes (Leslie, 2010; Levy, 2012).

¹⁰⁸ In 2014, the 314 and 37 per 100,000 population were victims of serious crimes including murder, rape, shooting, assault, larceny and (PIOJ, 2014). In particular, the 2014 Crime and Safety Report for Jamaica states that much of crime in Jamaica, such as murder and kidnapping, is still gang-related (OSAC, 2014). Also, Jamaica had one of the lowest incarceration rates in the Caribbean at that time (122.5 per 100,000), indicating that there is a failure to hold offenders accountable (UNODC, 2013). In 2017, there was an increase in murders and shootings, much of which was attributed to gang crime. The 2018 Crime and Safety report found that 1616 murders took place in 2017, which was the highest rate seen in 6 years and a 20% increase from the previous year (OSAC, 2018). However, the police were only able to make arrests in 44% of homicide cases with a 29% conviction rate for the same crime.

remove dons. When the government was forced to arrest and extradite Dudus¹⁰⁹, residents of Tivoli Gardens barricaded the entry points of Tivoli with weapons and their bodies. Despite the successful extradition of ‘Dudus’, the efforts of the police resulted in 73 civilians being killed¹¹⁰.

The removal of dons has weakened the relationship with the state, as it has not sought to reclaim the roles that the dons initially took over from the state, nor does it seek to hold political officials accountable in the same way. The 2006 National Governance survey (Powell, Bourne, & Waller, 2006) noted that most citizens thought of corruption as a normal part of Jamaican life. Many respondents indicate that it was ‘likely or ‘very likely’ for political officials and judges to be bribed. Bourne (2010) found that 82.4% of 1,338 respondents in Jamaica felt that the administration of justice and governance favoured the elite and interest groups.

A Shift towards Opportunistic Policy Transfer

Despite the fact that many of the policies promoted by the US had negative effects on the state’s relationship with the majority classes, the Jamaican government continues to give primacy to the interests of those whom they have an opportunity to obtain funding from. For instance, the most recent Auditor General’s Report (2014) indicated that the search for justice reform programmes has largely been rooted in developed countries¹¹¹. The 2009 JJSTRF Policy Agenda Framework states

¹⁰⁹ In 1983, an extradition treaty was signed between Jamaica and the US, which facilitated the US government to prosecute Jamaican nationals for narcotic related offences (Extradition Treaty with Jamaica, 1983, https://www.oas.org/juridico/mla/en/traites/en_traites-ext-usa-jam.pdf, accessed April 28, 2015).

¹¹⁰ Women and children in particular, will use themselves as physical shields to protect the don (Johnson & Soeters, 2008). One of the first reported attempts to remove a don took place at the height of the drug trade in 1998, when Donald ‘Zeeks’ Phipps was arrested for attempted murder and wounding with intent (Charles, 2002). When Zeeks was arrested, hundreds of residents from both PNP and JLP garrisons put their differences aside in support of the don. Residents from Matthews Lane and Tivoli (a JLP garrison) joined together in protest in the front of the Central Police station (Charles, 2002).

¹¹¹ Trinidad was the only Caribbean or developing state named that was considered in the search for effective rehabilitation programmes.

that the Jamaican government gave priority to the recommendations of their international development partners, which were based in part, on the Millennium Development Goals¹¹² (Dalby, 2009). The report from the Joint Select Committee, which considered the Jamaican *2014 SOCA*, affirmed the importance of the legislation being in line with that of international best practice, by referring to the *UN Convention against Transnational Organized Crime* and examples of legislation from the US, in states such as California.

I have discussed the fact that there has donors have relaxed certain parameters associated with funding and encouraged a contextualised and participatory approach to policymaking. However, despite this shift that expands the availability of funding and encourages collaboration across a wider range of stakeholders, this emphasis on international stakeholder interest continues, even without coercion from developed states on the Jamaican government to implement certain policies. I propose that the economic dependence on international stakeholders has become embedded into the political culture of Jamaica. Thus there is a type of self-imposed pressure to act opportunistically by adopting policies that increase the likelihood of taking advantage of funding opportunities. As noted, Jamaica has a long-standing relationship with Canada. Since the 1980s, CIDA has consistently provided funding for the expansion of existing crime reduction programmes that are run by the voluntary sector. They have given significant funding to DRF for the

¹¹² The motivation for reform was prompted by the 2000 Millennium Summit (<http://www.un.org/millenniumgoals/pdf/mdg2005progresschart.pdf>, accessed October 16, 2016). This summit brought 191 representatives from different countries to develop plans that encouraged partnership between developing and developed countries to ‘create an environment at the national and global levels alike- which is conducive to the development and elimination of poverty’ (Dalby, 2009). More specifically, these goals were: (i) the eradication of poverty (ii) access to primary education (iii) gender equality and the empowerment of women (iv) child mortality (v) mental health (vi) HIV/AIDS (vii) environmental sustainability and (viii) Global partnership. 189 countries including Jamaica, committed to focusing on addressing these goals by 2015 (<http://www.un.org/millenniumgoals/pdf/mdg2005progresschart.pdf>, accessed October 16, 2016).

development of the Social Conflict and Legal Reform Project¹¹³, which ran from 2001 to 2004. In addition, CIDA and other offshoot organisations such as the Canadian Caribbean Cooperation Fund (CCCCF), have given significant funding to the Jamaican government programmes that focus on crime prevention through creating alternative pathways to the formal justice system, including CAN\$20 million and CAN\$500,000 to the most recent justice reform efforts respectively¹¹⁴. Their on-going efforts have enabled the implementation of a number of justice related programmes, including the capacity strengthening of the Police Public Complaints Department and the development of firearms policy in 1997¹¹⁵ (Stone, Miller, Thornton & Trone, 2005).

More recently, the *Caribbean News* noted that Jamaica is one of the CARICOM countries that benefitted from CAN\$90 million dollar funding for the Judicial Reform and Institutional Strengthening Project (JURIST) in 2017 (<https://wp.caribbeannewsnow.com/2017/12/26/jurist-project-strengthens-justice-system-jamaica/>, accessed July 2018). In particular, Jamaica had received up to Can \$44.2 billion for the development of the Jamaican justice sector (http://www.jamaicaobserver.com/news/16-years-of-Canadian-support-for-justice-system_85029,

¹¹³ The mandate of this project was to implement conflict resolution programmes throughout Jamaican communities through training of teachers and mediators.

¹¹⁴ In addition DFID and the UK Foreign Commonwealth Office (FCO) have sought to address issues within law enforcement by donating 4.5 million pounds and 9.2 million pounds between 2008-2011 and 2011-2015 respectively for training of law enforcement and increased accountability in the justice system respectively (<http://issat.dcaf.ch/Learn/Resource-Library/Country-Profiles/Jamaica-Country-Profile>, accessed August 30, 2017). Also, USAID has spearheaded the development of the Community Empowerment and Transformation Project (COMET), a project aimed at the dismantling of gangs through a series of initiatives including the strengthening of civil society and improvement of community policing programmes.

¹¹⁵ The Firearms Act (2010) seeks to reduce the availability of illegal firearms through legislative measures such as restriction of importation of firearms and ammunition and increased punishment for possession of firearms with intent to injure.

accessed August 29, 2017). This includes the contribution of Can\$ 19.2 million to modernise¹¹⁶ the system and Can\$ 5.2 million for capacity building. In addition, the Canadian High Commission gave funding to training workshops for the incorporation of restorative circles in schools (Ferguson & Chevannes, 2018). This funding support has served to improve the situation of Jamaican women as well (Thame & Thakur, 2014; <https://wp.caribbeannewsnow.com/2017/12/26/jurist-project-strengthens-justice-system-jamaica/>, accessed July 2018). As part of judicial reform efforts, a range of Canadian organisations, such as the Canada/Caribbean Gender Equality Programme (CCGEP) and the JURIST project lent efforts to reducing gender-based violence, which included the development of a national gender equality policy.

Within the regional literature on justice reform and donor states, there is no indication that Canada, as a donor, has imposed any pressure to adopt certain policies and practices. Much of the funding given to the Jamaican government from Canada has contributed to general improvement of the justice system, rather than advocating a particular approach. For instance, much of the funding for JUST programme went towards increasing strengthening capacity and removing barriers to reform (Dalby, 2009; <http://www.moj.gov.jm/programmes/just-programme>, accessed July 2018). Also, the Canada Fund for Local Initiatives has funded a number of projects with both CSOs and the state on crime prevention and state accountability (http://www.canadainternational.gc.ca/jamaica-jamaique/development-developpement/CFLI-FCIL-Projects_projets-2014-15.aspx?lang=eng, accessed July 2018). While this funding body has 3 thematic priorities (such as conflict management, economic growth and climate action), there is no specific stipulation as to the approach that should be taken. In fact, many of the identified eligible costs cover general areas, such as administrative costs, publishing fees and website development (<http://>

¹¹⁶ Modernisation of the justice system includes the computerisation of court documents, improved case management, increased availability of information for victims throughout court process as well as increasing jury pools (Canadian Bar Association, 2007).

www.canadainternational.gc.ca/jamaica-jamaique/development- developpement/CFLI-FCIL-2018-19.aspx?lang=eng, accessed July 2018).

In fact, Canadian donors have increasingly provided support that is responsive to the needs of the Jamaican community. For instance, the project director of the JURIST programme specifically stated that the aim of the JURIST project is to address the specific needs of the poorer communities, such as the development of context-specific guidelines for handling issues of gender equality for each CARICOM country (<https://wp.caribbeannewsnow.com/2017/12/26/jurist-project-strengthens-justice-system-jamaica/>, accessed July 2018). Canadian agencies were responsible for many of the papers and consultancies cited in the JJSTRF Policy Framework (Dalby, 2009). Much of the report speaks to the need for increased research and prioritization of the Jamaican context, including the need to ‘computerise’ the office of the DPP, the issue of sustainability as well as the recruitment of professional resources to address the lack of available local crime data.

On the other hand, there is some evidence that the Jamaican government has been proactive in seeking assistance from the Canadian government by choosing policies that are in line with their political interests. For instance, JJSTRF states that the diaspora information available to the Ministry of Foreign Affairs should be proactively used to conduct ‘early outreach’ to diaspora in Canada and other countries to gauge their interest in participating in the justice reform framework (Dalby 2009). In 2004, the Jamaican government held a diaspora conference to encourage donations from Canada and other developed states, through the development of a website, the designation of ‘Diaspora Day’ and the creation of a diaspora foundation (Dalby, 2009). During the development of local gender policy, it was found that the ideas of international organisations were incorporated into the policy, even though they were not part of the national consulting process (Thame & Thakur, 2014).

This shift towards opportunistic policy transfer is highlighted by the simultaneous implementation of policies and programmes with contrasting ideals. For instance, while the research indicates that there have been a number of justice reform efforts, including that of a national RJ policy, the Jamaican government has chosen to implement legislation that is antithetical to the context-specific approach being advocated by its donors. For instance, the 2009 SOA is legislation that calls for increased incarceration with less opportunity for reprieve for sex offenders. In particular, the adoption of the sex register¹¹⁷ is an example of government neglect of differences between Jamaica and donor states. While the use of sex registers has had some positive effect on first-time offenders (only with limited access and online), it could have detrimental effects on the prevalence of sex offenders in Jamaica due to the differences in availability of technology and professional resources (Letournou et al. 2010). For instance, in the absence of costly electronic tracking systems, sex registries cannot work unless sex offenders voluntarily update the relevant authorities of their whereabouts. Also, it might not be advantageous for the Jamaican government to implement a system that requires costly tracking equipment and the training of law enforcement that is already overburdened. During my interview with Minister Golding, (MOJ Offices, 18/11/14) he indicated that there were plans to implement electronic tagging; a tracking system for offenders that is popular in developed states. When asked how this would be financed he said it was suggested that offenders would pay for this technology themselves; meaning that only those that can afford to pay for the electronic tags would benefit from the opportunity to avoid incarceration, thereby compounding the disadvantages of poorer communities in terms of their access to justice. Also, in

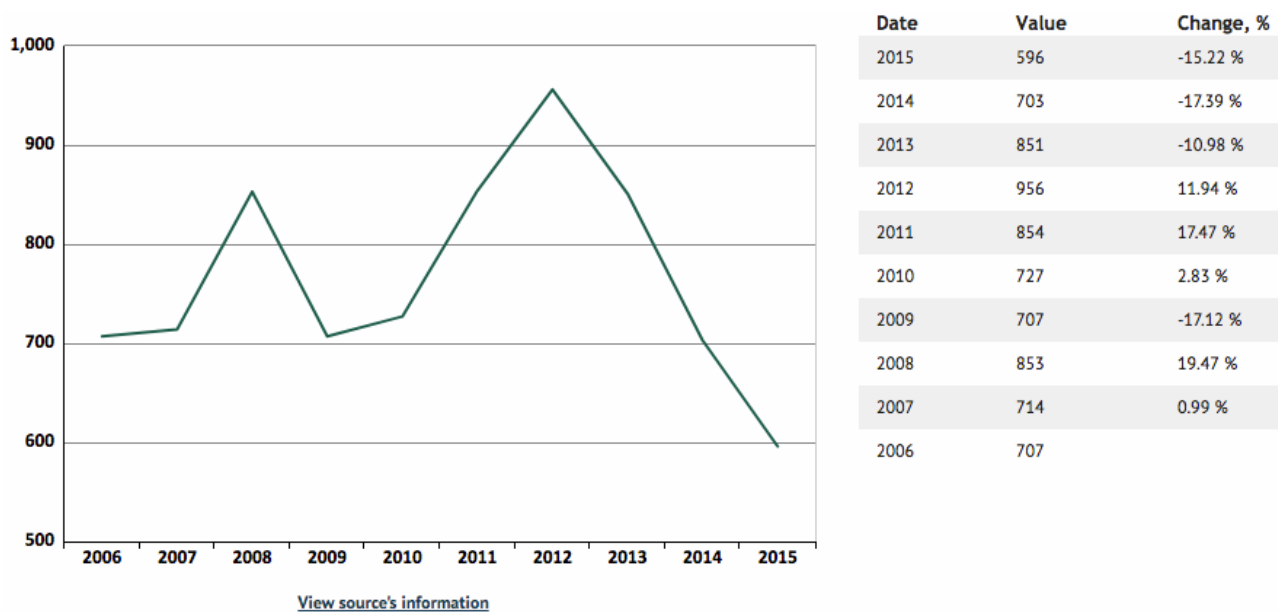
¹¹⁷ A sex registry allows law enforcement to monitor the activities of sex offenders by maintaining information on convicted sex offenders. Typically, this information includes offences committed, addresses of relatives and identifying physical characteristics. Another thing required of a registered sex offender is consistent reporting to the local police and notification of travel plans (Bonnar-Kidd, 2010; Agan, 2011; Prescott, 2012; Carpenter & Beverlin, 2012; Worley & Worley, 2013). In addition, many sex registries give public access to this information (Levenson & Cotter, 2005; Letournou et al. 2010).

some states, community notification has led to vigilante attacks by enraged citizens on sex offenders and their family members (Thomas, 2004; Letournou et al. 2010). A sex register is likely to exacerbate the potential for vigilante attacks. There have already been reports of vigilante attacks against sex offenders and victims of sexual violence in Jamaica (Allen, 1997; Charles 2002).

Canada also funds policy on sex offences. For instance, under the JURIST programme, the Canadian government is currently funding the development of model sentencing guidelines to accompany the 2009 SOA (<https://jis.gov.jm/response-sexual-assault-cases-pleases-high-commissioner/>, accessed August 2018). However, several interviewees affirmed the Auditor General's 2014 report, which highlighted a failure to investigate individualised rehabilitation programmes for sex offenders. Some of my interviews, including those who have first hand experience working with offenders, such as Dr. Sewell (forensic psychiatrist, UWI office, 9/1/14) and Dr. Oo (Lead psychiatrist, Bellevue Hospital, 8/1/15) noted a lack of local research on sexual offending and rehabilitation for sex offenders specifically. Thus there is use of international donor money to develop policy on an issue that still embraces an international approach, in spite of efforts from the donor to embrace a contextualised approach.

All available evidence suggest the 2009 SOA as an example that opportunistic policy transfer is also likely to lead to inappropriate policy transfer. In May 2014, the sex register database was completed (<https://jis.gov.jm/data-system-sex-offenders-registry-completed/>, accessed July 2018). However, in 2015, only 50 names had been added to the register (<http://rjnnews.com/local/50-names-now-on-sex-offenders-registry>, accessed July 2018). In 2013, 792 rapes were reported (OSAC, 2014). Although Jamaica has seen a decrease in the number of rapes in Jamaica, they do not correlate with timing of the implementation of the 2009 SOA or the sex registry.

Figure 4.1 Jamaica Rape Rates 2006-2015



(Accessed: [https://knoema.com/atlas/Jamaica/topics/Crime-Statistics/Assaults- Kidnapping- Robbery-Sexual-Rape/Rape](https://knoema.com/atlas/Jamaica/topics/Crime-Statistics/Assaults-Kidnapping-Robbery-Sexual-Rape/Rape), July 2018)

As seen in Figure 4.1, there was an increase in reported rapes after the implementation of the 2009 SOA until 2012. Although the rate of reported rapes has declined since then, the rate of decline was significantly less in 2014, indicating the null effect of the implementation of the sex register. In addition, there has been a slight increase in rapes between 2016 and 2017; from 470 to 473 (OSAC, 2017; <http://rjnnews.com/local/more-than-470-women- raped-last-year>, accessed July 2018). Also in 2016 and 2017, only 34 persons and 81 persons were convicted of sexual offences in St. Andrew respectively (<http://jamaica-gleaner.com/article/lead-stories/20180218/punishing-pervs- more-and-more-sexual-offenders-being-convicted>, accessed July 2018)¹¹⁸

In this thesis, I propose that the national RJ policy stands as an example of inappropriate policy transfer that is opportunistic in nature, from Canada to Jamaica. As will emerge, the Jamaican government adopted policy from the Canadian province of Nova Scotia, without coercion

¹¹⁸ There were 1,005 reported sexual offences in 2016 and 940 in 2017 (<http://jamaica-gleaner.com/article/lead-stories/20180218/punishing-pervs- more-and-more-sexual-offenders-being-convicted>, accessed July 2018).

and in spite of encouragement from local expertise as well as Canadian consultants and funding representatives themselves, to develop a more contextual ‘Jamaican’ RJ. Instead the Jamaican government actively sought and prioritised Canadian involvement, as indicated by the limited geographical search for justice policy, the recruitment of Canadian staff to develop and implement policy and the exclusion of local research that sought to investigate local forms of community-driven or restorative-oriented practices.

The Lack of Collaborative Governance in Jamaica

The weight given to international interests in Jamaican justice policymaking is highlighted by the lack of collaborative governance in Jamaica. The literature notes that the Westminster model is rooted in the practice of government, rather than governance, which emphasises involvement of a range of stakeholders in the policymaking process (Sutton 1999; Ryan, 1999; Altink, 2015). There is limited discussion of collaborative governance within the literature on Jamaican democratic practices and government (Schoburgh, 2007; Bowen, 2009; Jones, 2010; Minto-Coy, 2011; Moloney, 2013). Moreover, much of this discussion is not focused on any individual policy arena and tends to exclude jurisdictions where collaboration is not popular (Minto-Coy, 2011; Moloney, 2013). The available literature indicates that local stakeholders are often excluded from the policymaking process. I suggest that this lack of collaboration contributed significantly to the lack of a consensus in defining the concept of RJ and the approach to implementation in the policymaking process. Those who examine the policymaking process in Jamaica note that policy discussions begin among elites and outcomes are likely to be representative of the views of political representatives (Abrams, 2002; Headley, 2002; Jones & Schoburgh, 2004; Acosta, 2005; Harriott, 2009; Ricketts, 2010; Jones 2010; Daley, 2014). The paternalistic ‘top-down approach of the Jamaican government does not lend itself to collaboration. As a result of their financial input, international stakeholders are involved actively in the development and implementation of

policymaking Also, it tends to exclude the public sector, which allows the policymaking process to become dominated by government officials and private sector (Jones & Schoburgh, 2004; Ricketts, 2010; Minto-Coy, 2011; Moloney, 2013; Daley, 2014). Historically, much of the government contracts are given to private sector organizations. That is, those who are most disconnected and unaffected by crime are typically responsible for finding solutions to it. For instance, The Major Organised Crime and Anti-Corruption Agency (MOCACA) Strategy, 2015-2018 stated that 3 international consultants formed part of the committee that developed strategies to address organised crime (MOCACA, 2015).

I noted that policy has become a political tool that parties use to win favour with Jamaican citizens as well as the international lending community. The competitiveness between the political parties and overall political corruption contributes to a lack of cooperation across and between stakeholder groups. When policymaking takes place in a competitive setting, there is less motivation to engage in collaboration (Exadaktylos & Zahariadis, 2012; Moloney, 2013). Essentially, the view of policy as a tool for political patronage overrides its value as a vehicle of change. I have discussed the benefits of a unified approach to any policymaking exercise in terms of its capacity to improve efficiency and effectiveness through consensus development, capacity building and cost-effectiveness. However, issues of political competitiveness can often drive administrations to focus on appearing to effect change, instead of utilising the perspectives of those on the ground.

The literature on policymaking and policy transfer provides a list of actors that are typically involved in policymaking, including actors including government officials, political parties, civil servants, pressure groups, policy experts and supra-national institutions (Dolowitz & Marsh, 1996; Stone, 2001; Abrams, 2002; Acosta, 2005; Benson & Jordan, 2011; Cahn, 2013). The literature indicates how essential it is that stakeholders work collaboratively (Bowen, 2009; Innes & Booher,

2010; Exadaktylos & Zahariadis, 2012; Moloney 2013). There is particular emphasis within the literature on the value of involving non-state stakeholders in decision-making activities that affect the well-being of society (Bishop & Davis, 2002; Burstein, 2003; Schoburgh, 2007; Moloney, 2013).

Public Opinion

A key stakeholder group of the policymaking process, which is often overlooked, is the public. There is a wealth of literature on public opinion in political decision-making (Gramberger, 2001; Burnstein, 2002; Bishop & Davis, 2002; Burstein, 2003; Irvin & Stansbury, 2004; Green, 2006; Janse & Konijnendijk, 2007; O’Faircheallaigh, 2010; Glucker et al. 2013). As might be expected there is relatively little literature that is dedicated to public consultation within developing states¹¹⁹. Much of the literature does however highlight the value of direct citizen input in policymaking (Bishop & Davis, 2002; Burstein, 2003; Bishop & Davis, 2002; Irvin & Stansbury, 2004; Van Camp & Lemonne, 2005; Zimring & Johnson, 2006; Jones, 2010; O’Faircheallaigh, 2010; Glucker, et al. 2013). Public participation usually improves the problem-solving capacity of the state, which results in improved policy outcomes. The contribution of the public allows policy makers to become aware of practical concerns that will influence how they Use the policy to address the larger problem. Also, increased public participation is thought to increase public trust. The public can educate the state on its needs (Bishop & Davis, 2002; Irvin & Stansbury, 2004; O’Faircheallaigh, 2010; Glucker et al. 2013). In turn, this involvement might bring about increased cooperation of the public with state-led decisions. In this way, public participation increases the transparency of state decision-making and can change the perspective of apathetic or disillusioned

¹¹⁹ In Burstein’s review of literature that discusses the impact of public opinion on public policy, he found that most of the articles were based on policy in the US and Europe (Burstein, 2003). 0 articles that provided information on developing countries (Burstein, 2003).

citizens who have little faith in the system (Gramburger, 2001; Bishop & Davis, 2002; Irvin & Stansbury, 2004; O’Faircheallaigh, 2010). Public participation in the policymaking process makes citizens more informed about the policymaking process and the issues being addressed (Gramburger, 2001; Irvin & Stansbury, 2004; O’Faircheallaigh, 2010; Glucker et al. 2013)¹²⁰. While the value of public opinion is clear, there is a lack of consensus on how that participation should be achieved and the level required (Arnstein, 1969; Johnstone, 2000; Bishop & Davis, 2002; Irvin & Stansbury, 2004; Green, 2006; Glucker et al. 2013; O’Faircheallaigh, 2010; Moloney, 2013)¹²¹.

When it comes to penal policy, I suggest that there is justification for some public involvement in penal policy development, particularly when implementing community driven approaches to crime. It is assumed that the pressure to respond to public opinion has resulted in the approach of deterrence that is predominant in both developed and developing nations (Johnstone, 2000; Green, 2006; Zimring & Johnson, 2006; Maruna & King, 2013). Terry Thomas (2004) categorizes this chain of influence as “popular punitivism”. Popular punitivism is defined as, “the interplay in late modern society between the media, public opinion and politicians that generates a backdrop to the formulation and implementation of both criminal justice and penal policy (Monterosso, 2009). Despite literature that indicates the lack of impact of incarceration on

¹²⁰There are some who voice concerns about whether public participation in policymaking is worth the effort (Burnstein, 2003; Irvin & Stansbury, 2004; Green, 2006). The process of engaging citizens on public policy issues can be quite time consuming and costly, especially if the rewards of the process turn out to be limited. In addition, public opinion might be dominated by interest groups and elites who are comfortable enough financially to volunteer the time required to participate (Burnstein, 2003; Irvin & Stansbury, 2004). For instance, citizen-participation committees usually consist of members of a higher SES, including college graduates and participants who are paid to represent the interests of businesses (Irvin & Stansbury, 2004). However these groups might also participate in order to represent the interests of minority groups.

¹²¹In accordance with Arnstein’s ladder of participation, some academics argue that much of government consultation with the public is tokenistic and recommend participation to take place on the higher level of this scale at all times (Bishop & Davis, 2002; O’Faircheallaigh, 2010). On the other hand, there are some who argue that the level of participation is dependent on the policy and the issue being addressed (Johnstone, 2000; Bishop & Davis, 2002; Green, 2006).

reoffending, there is a widespread assumption that prison is an effective deterrent¹²² for offenders (Mears & Bales, 2009; Bonta, 2010; Freiburger & Iannacchione, 2011; Cullen et al. 2011; Bushway & Owen, 2012; Budd & Desmond, 2013; Wermink et al. 2017)¹²³.

As noted earlier, the societal call for increased punitive measures is an opportunity for politicians to seem responsive to the public. Where there is public mistrust, governments are more likely to implement harsher forms of punishment such as mandatory minimum sentences and the removal of parole options, which remove the discretion of punishment from judges (Zimring & Johnson, 2006; Green, 2006). In addition, it may be beneficial for the prospect of re-election for politicians to maintain the status quo. It is advantageous to act in accordance with the will of the people. If the will of the people is assumed to favour increased incarceration, then politicians are likely to embrace policies that underscore that belief (Zimring & Johnson, 2006; Green, 2006).¹²⁴

Many participants of my research indicated the popularity of a punitive, deterrence-based approach to punishment¹²⁵. In particular, PS Carol Palmer (MOJ Offices, 10/01/15) and Justice McIntosh (Puisne Judge, DPP offices, 11/28/14) indicated that RJ has been largely implemented for relatively minor crimes as a starting point because of the societal encouragement of severe punishment and

¹²³ Deterrence is understood as the use of punishment that aims to reduce the incentive of committing crime (Drago, Galbiati & Vertova, 2011; Brooks, 2012).

¹²⁴ Having inherited much of its legislation from Britain, the overall approach to punishment in Jamaica is rooted in deterrence (Harriott, 2009; UNDP, 2012; Ministry of National Security, 2014). Jamaica has the 104th highest incarceration rate in the world; incarcerating 174 people per 100,000 of its population (Robottom, 2011; Walmsley, 2015). This is compounded further by the inhumane conditions seen in Jamaican correctional facilities, which will be discussed in the following chapters.

¹²⁵ In this thesis, I propose that, during times of justice reform in jurisdictions that suffer from public mistrust, public consultation is particularly important for the government in engendering a positive public reception of changes to the justice system, especially when they are inconsistent with the status quo. In particular, public awareness and seeking public opinion on RJ might have helped to develop a form of RJ that Jamaicans would have been more willing to participate in.

the popular misconception of RJ as a soft approach to crime¹²⁶. In addition, Wedderburn (FES Director, FES Offices, Kgn, 10/10/14) and Professor Biholar from UWI Law School (NMLS, 22/1/15) indicated that many Jamaicans still felt that the increased punishment for sex offenders under the 2009 SOA was not severe enough¹²⁷.

Civil Society

Another key stakeholder in justice policy is civil society. The literature highlights the benefit of collaborating with CSOs, particularly in societies where there is low public trust of the state and its justice institutions (Jones, 2003; Stone, 2004; Jones & Schoburgh, 2004; Plaatjies, 2008; Prince, 2012; McFarlane & Canton, 2014; Macauley, 2013). Earlier in this thesis, I noted that the literature on governance argues that the involvement of civil society in governance can help to reduce the impact of contextual issues that hamper good governance in Jamaica, including competitiveness between political parties, political corruption and resource deprivation (Harriott, 1999; Headley 2003; Sives, 2010; Moloney, 2013). Civil society has the ability to fight corruption and public mistrust of the state by pressuring the state to hold parties accountable, including illegal organisations that the public are dependent on (Charles, 2002). Sives (2010) cites the example of civil society in Italy acting as a deterrent to the criminal activity of the Mafia¹²⁸. Also, CSOs can provide cost-effective ways of providing service delivery, which is important in jurisdictions that suffer from lack of resources (Sives, 2010). Finally, they can be a valuable resource in terms of mobilising issues within the society by acting as a liaison between the state and its citizens. Usually their membership consists of individuals from across social classes (Lewis, 2012). By engaging

¹²⁶ However, I suggest later on, that the reason for the popularity of severe punishment is due to a lack of information. Therefore, public consultation must include an element of unbiased public education.

¹²⁷ Later on in the thesis, I will highlight the value of consulting with victims due to their unique perspective on justice, as opposed to the largely uninformed perspective of community members.

¹²⁸ Charles (2002) highlights the similarities between the dons and garrisons and the Mafia culture.

with civil society, the Jamaican government can ensure that the needs of the communities are identified correctly and encourage them to be met. Citizens may be more trusting of participating in programmes that are run by CSOs that they are familiar with, rather than the state.

The literature also provides an overview of the historically disadvantageous exclusion of civil society in policymaking in Jamaica (Bowen, 2009; Jones, 2010; Minto-Coy, 2011; Moloney, 2013). Much of it argues that the Jamaican government has only involved civil society in a tokenistic manner (Harriott, 1999; Abrams, 2002; Headley, 2002; Jones & Schoburgh, 2004; Ricketts, 2010; Jones 2010; Minto-Coy, 2011; Daley, 2014). Moloney (2013) identifies civil society involvement in governance in Jamaica as, at best, consultative. Within the context of justice, The Jamaican government has a history of using civil society as providers of justice-related public services, ranging from Alternative Dispute Resolution (ADR)¹²⁹ to crime prevention community projects (Witter, 2004; Epstein, 2006; Moloney, 2013)¹³⁰.

Shapland (2011) notes a developing trend for states to create a new group of professionals instead of developing partnerships with organizations that are operating within the community already. Similarly, CSOs have rarely been incorporated into the development of justice programmes in Jamaica (Jones & Schoburgh, 2004; Daley, 2013). In the case of the development of anti-gang

¹²⁹ ADR refers to a range of practices that use problem-solving techniques in order to resolve disputes without resorting to litigation (Holbrook & Gray, 1995; Brown & Simanowitz, 1995). ADR involves direct communication between or amongst parties, where they participate in deciding how the issue should be resolved. There is usually a common thread amongst these practices; a neutral party facilitates the resolution of this issue, rather than determining punishment (Brown & Simanowitz, 1995; Knudsen & Balina, 2014). In Jamaica, ADR was introduced primarily to decrease the burden on the judiciary (Zacca, 1995; UNDP, 2012; Charles & Beckford, 2012; Blake, 2013). Later on, I argue that DRF, PMI and other civil society groups should have been considered main stakeholders in the development of the national RJ policy.

¹³⁰ Since the 18th century, civil society and volunteerism have played an important role in Jamaica. Following slavery, missionaries were instrumental in the development of free villages, which were developed through the voluntary service of citizens (Witter, 2004; James, 2014).

strategies, government documents, including the 2007 policy agenda from the MNS emphasised the development of partnerships with civil society for the service provision and delivery of training, advocacy and representation of public opinion (Dalby, 2009). However, instead of working with local CSOs, new organizations were created to deliver these services. The Community Assessment Security and Transformation Programmes (2009) indicated that the government formed many of the organizations to implement crime prevention programmes from scratch, such as the CSJP¹³¹, PMI and Community Security Initiative (CSI) (Government of Jamaica, 2009). In addition, international not-for-profit organizations such as UNICEF were involved heavily with the provision of training and general violence prevention efforts (Leslie, 2010).

This limited involvement is compounded by the appropriation of civil society by political parties. The literature on civil society in developing countries highlights the involvement of civil society in the struggle for political hegemony (Jones, 2010; Sives, 2010; Minto-Coy, 2011; Moloney, 2013). Post-independence, high level functioning CSOs were created by and became tied to political parties and crime organizations. Sometimes CSOs were forced to enter into agreements with governments or criminal groups in order to continue operating. Usually this agreement turned CSOs into vehicles of electoral gain; CSOs gained access to resources, but quelled any potential resistance or any form of independent action (Sives, 2010; Jones, 2010; Moloney, 2013). Instead of allowing civil society to be effective in the delivery of services and programmes, the Westminster model appropriated civil society as another political tool for political patronage. Thus CSOs became a way of soliciting votes.

¹³¹ CSJP is a crime and violence prevention programme that seeks to ‘enhance citizen security and justice in Jamaica’, particularly in vulnerable communities, through implementation of programmes that strengthen crime management capacity, improve the delivery of justice services and prevent crime and violence. Examples of programmes are entrepreneurship training, provision of victim support, and community dispute resolution (<http://www.mns.gov.jm/content/citizenship-security-justice-programme>, accessed March 7, 2017).

The appropriation of CSOs by political parties meant that social services and their activities were state-controlled (Harriott, 2004; Jones, 2010; Sives, 2010; Moloney, 2013). For instance, the Jamaica Welfare, a civil society group that promotes self-governance and community development became a governmental body under the JLP administration (Moloney, 2013). In short, civil society was limited in their choices: be agreeable with the state in terms of policy prescription or refuse involvement in hopes that its political party will return to power or to be apolitical altogether¹³². None of these options provides any hopes of sustainability for CSOs. Ultimately the precarious position that they occupy has an impact on their ability to deliver services, and influence change (Sives, 2010; Jones, 2010; Minto-Coy, 2011; Moloney, 2013)¹³³.

However, the community of CSOs have changed over time. Although it is difficult to provide statistics, there has been a proliferation of CSOs that work on justice-related issues (Bowen, 2013; James, 2014; BTI, 2016). There are over 3,500 CSOs operating in Jamaica. The Council of Voluntary Social Services (CVSS) has identified 115 NGOs, while the Social Development Commission named 2,903 community-based organisations in 2012¹³⁴. The literature notes that there are 4 main areas of CSO involvement; social services, community building, local economic development and sustainable development (Bowen, 2013; James, 2014; BTI, 2016). In Jamaica, much of the work of CSOs for the justice sector focuses on social services and capacity building,

¹³² While there are CSOs that are not dependent on or in competition with the Jamaican government for funding, these organizations, such as Jamaicans for Justice and J-FLAG are categorized as ‘troublemakers’ since they are often critical of the government’s policies. As a result the government does not make any effort to collaborate with them.

¹³³ In the case of the national RJ policy, I characterise the interaction between the state and civil society as one of consultation and argue later that the failure to be collaborative contributed to the disconnect between the aims of the policy and its implementation.

¹³⁴ Of this number, 2,283 were active and 451 were partially active (James, 2014). After cooperation with the UN and Commonwealth foundations in the 1980s, there was an increase in the number of CSOs and their level of activity (James, 2014). In particular, the implementation of SAPs pushed the civil society community to minimise the economic losses to the majority classes and ensure that their rights were protected where possible.

with a particular emphasis on advocacy and service delivery (James, 2014; BTI, 2016). For instance, Jamaicans for Justice (JFJ) is one of the most self-sustainable civil society organisations that have been successful in effecting change in Jamaica. Their mandates includes lobbying and advocating against human rights violations and delivery of related services, such as legal representation and human rights training for correctional officers (James 2014). In 2011 and 2013, JFJ trained 1000 and 750 recruits respectively (James, 2014). They are also responsible for successfully lobbying for a more efficient and justice jury selection process and the Commissions of Enquiry that investigated a number of justice issues, such as disturbances in the St. Catherine district prison (James, 2014).

Within my own research I interviewed 7 Jamaicans CSO representatives that were dedicated to resolving justice-related issues, including gender equality, and offender rights through service delivery, advocacy and research (See Table 2.0)¹³⁵. In particular, I interviewed the 3 members of two organisations that spearhead CSO involvement the Jamaican justice sector. Formerly named the Mediation Council of Jamaica, the DRF was founded in 1994¹³⁶. It is a private voluntary¹³⁷ organization that provides a number of services, including public awareness and training in ADR techniques such as arbitration and mediation. As part of these efforts to educate the Jamaican

¹³⁵ The CEO of Stand Up for Jamaica, Carla Gulotta (Standup Offices, Kgn, 20/1/15), affirmed their involvement focused on project delivery and advocacy for legislative reform. She highlighted a number of projects, including rehabilitation in correctional facilities, human rights training for correctional officers and the facilitation of education and professional development in prisons.

¹³⁶ I interviewed Damian Hutchinson, CEO of PMI (PMI Offices, Kgn, 26/2/15), Paul Hines, CEO of DRF (DRF, Kgn, 7/11/14) as well as Donna Parchment-Brown one of the founders of both PMI and DRF (MOJ Offices, Kgn, 03/02/15).

¹³⁷ I chose to highlight DRF and PMI in this thesis because they are two CSOs who work in collaboration with the Jamaican government as part of the justice system. For instance, DRF receives some funding from the government (Dispute Resolution Foundation, <http://www.disputeresolutionfoundation.com/>). Also, both organizations practice RJ and thus were particularly relevant to the development of a national RJ policy.

community, DRF has reform programmes that are targeted at youth and family. DRF has established 18 'Peace Centres' throughout Jamaica, where people can access ADR services (at a cost). In 1999, the courts recognised DRF as responsible for mediation services in minor civil and criminal disputes and the official consultant for determining appointments of mediators to the court (Fiadjoe, 2004). Once a matter has been put before the court, judges have the discretion to refer cases to DRF for mediation. Once an agreement has been reached, a formal document is returned to the courts for approval. If an agreement cannot be made, then the case goes back to the courts.

The MNS founded the Peace Management Initiative (PMI) in 2002 (Government of Jamaica, 2009). It consists of 12 members from various sectors including religious, academic, political communities as well as other CSOs representatives¹³⁸. PMI is the only intervention programme that uses ADR for gang violence (Leslie, 2010). It provides mediation, counselling and social development services in over 50 volatile communities that suffer from politically motivated acts of violence and gang warfare within the KMA and the wider parish of St. Andrew (Government of Jamaica, 2009)¹³⁹. As a result of their focus on volatile communities and gang violence, PMI is more likely to mediate between larger groups, while DRF mediates between individuals. These two organisations are particularly relevant to the thesis due to their direct experience with restorative-oriented practices¹⁴⁰.

¹³⁸ Donna Parchment-Brown was the director of both DRF and PMI until her move to the MOJ as the head of the Justice Reform Implementation Unit (JRIU) at the MOJ.

¹³⁹ After significant success in Kingston, the programme was expanded to include the second city of Jamaica, Montego Bay.

¹⁴⁰ Later on, I will argue that their direct involvement was integral to the development and implementation of a national RJ policy that considered the Jamaican context due to their history in spearheading the use of these practices in Jamaica. Ultimately I argue that their superficial involvement resulted in the creation of a context-insensitive policy that was implemented with minimal efficiency.

There is also greater collaboration within the CSO community (James, 2014). The assessment of civil society in Jamaica 2014 report cites collaboration as one of the strengths of the CSO community (James, 2014). There is increased partnership seen within the CSO community as well as collaborations between civil society, state organisations and the private sector. For instance, three umbrella organisations were created to accommodate collaboration within the CSO community, including the Jamaica Coalition of Civil Society Organisations. Also, the report notes the collaboration between JFJ, IJCHR, the Jamaica Bar Association (JBA) and the Opposition (JLP) that led to the successful legal challenge of the constitutionality of plans to establish a Caribbean Court of Justice (CCJ) (James, 2014). The report notes that the increased collaboration across organisations has led to consensus, efficiency and cost-effectiveness (James, 2014). Also, PMI and DRF have a partnership, with Donna Parchment-Brown having been instrumental in founding and directing both organisations. Some of my interviewees affirmed increased level of collaboration. Carla Gulotta from Standup for Jamaica (Standup Offices, Kgn, 20/1/15), Donna Parchment-Brown (in her capacity as former CEO of PMI and DRF, MOJ Offices, Kgn, 3/2/15), Joan Wedderburn of FES (FES Offices, Kgn, 10/10/14) and Hermoine Mckenzie from AWOJA (AWOJA Offices, Kgn, 16/02/15) all spoke to the successful partnerships between CSOs. For instance, Wedderburn (FES Offices, Kgn, 10/10/14) noted a number of partnerships, including leadership and equality training with the Caribbean Quality Development Centre, promotion of gender equality with the 51% Coalition and lobbying for gender equality alongside the Sistren theatre Collective. Gulotta, of Standup for Jamaica highlighted their partnership with JFJ and JFLAG on discrimination and police brutality. She (Standup for Jamaica, Kgn, 20/1/15) stated,

“To co-ordinate with other NGOs, we don’t have any problems, we know each other very well, we try to make a way. We have a coalition that meets quarterly to discuss, which emergency to give priority to and who is doing what since there is not so many of us.”

She (FES Offices, Kgn, 10/10/14) went onto highlight the fact that this collaboration has led to increased efficiency by preventing duplication of work,

“If I don’t do it, someone will. If there is a problem with police extrajudicial killing, we pass it on to JFJ, if there is a problem with an abused woman, we send them to Women Inc. it is important that each one of us try to get somehow a little bit of specialised”.

This collaboration extends to financial support. While the research indicates that lack of professional and financial resources remains an issue for CSOs, significant strides have been made in developing relationships with donors. For instance, JFJ, the most financially stable CSO in Jamaica, has on-going funding relationships with DFID, the European Union, The German Embassy and CIDA (James, 2014). In fact, CIDA is responsible for spearheading increased funding of civil society. In the 1980s CIDA provided bilateral funding through the UN. In addition, the report noted that CSOs have found alternative pathways to funding, such as state funding, strategic partnership development with private sector organisations, fundraising events and sponsorship programmes (James, 2014)¹⁴¹. A number of international NGOs, such as UNICEF have provided funding to enable civil societies to carry out specific activities. My discussion with Carla Gulotta from Standup for Jamaica (Standup for. Jamaica office, 201/1/15) highlighted them receiving funding from a number of international NGOs to provide training to correctional staff and offenders. Rachel Morrison of UNDP (UNDP Offices, 21/1/14) stated that UNDP had provided funding to have CSOs deliver victim support to the victims of the Tivoli shoot-out in 2011 during the Dudus extradition.

However the level of collaboration is not explicitly discussed within the literature. There has been increased acknowledgement of the pivotal role that CSOs can play in creating good

¹⁴¹ The Assessment of Civil Society in Jamaica Report (James, 2014) noted that funding from international donor organisations has been historically inconsistent. In my interview Hermoine McKenzie, head of AWOJA (AWOJA Offices, 16/2/15), noted lack of resources as one of the main obstacles.

governance (Bowen, 2013). Many of the partnerships noted within the 2014 report are intermittent, dedicated to a single activity of advocacy or service delivery. The former Prime Minister, Bruce Golding published an article in the Jamaica Gleaner, describing the shift of CSO involvement from ‘purely representational to participatory’ (<http://jamaica-gleaner.com/article/commentary/20150510/civil-society%E2%80%99s-role-governance>, accessed July 2018). According to Moloney’s Continuum of Collaboration, this statement indicates that the extent of the collaboration between organisations is limited to, at best, coordination.

In particular, there is little discussion of collaboration in terms of policy development (Bowen, 2013; James, 2014). The Assessment of Civil society in Jamaica (James 2014) states that there are 4 main approaches that CSOs use to influence policy in Jamaica: collaboration, complementary activities, confrontation and consciousness raising. Some level of involvement in policy change has been noted. For instance, JFJ is responsible for lobbying for implementation of the ‘Administrative Policy re Attendance at Post Mortem Examinations’ (James, 2014). The report noted a positive working relationship between GOJ and the Jamaican Youth Advocate Network (JYAN); they rated themselves highly in terms of being recognised by the state and cooperating with government organisations to effect change (James, 2014). Some organisations, such as IJCHR, have influential committee members, which bolster their potential to influence policy.

However, much of this collaboration is achieved through complementary activities and consciousness-raising. In Bowen’s discussion of the role of Caribbean CSOs in governance, she describes civil society involvement in policy development as ‘tangential’ (2013). She noted that 6 of 23 organisations were involved with policy development, only 3 (13%) of those organisations provided evidence that their efforts genuinely influenced policy (Bowen, 2013). There is little done in order to ensure that the voice of civil society and their work with affected Jamaican communities informs policy development and implementation. For instance, Rachel Morrison the HIV co-

ordinator of UNDP (UNDP Offices, 21/12/14) noted in our interview, that they have limited involvement in justice policy development, despite their on-going role in service delivery.

Conclusion

In this chapter, I have discussed significant changes that have taken place within justice policymaking landscape of Jamaica. In particular I discuss the shift in relationship between the state and international donor stakeholders, where the Jamaican government has proactively sought to adopt policy as an opportunity to obtain funding from funders. In addition, I have noted that, as part of the need for collaborative governance to develop contextual and effective justice policy, there should be increased public consultation. Later on, I argue that one of the reasons for the ineffectiveness of public consultations for the national RJ policy was the failure to dispel public myths about the nature of crime in Jamaica. As a result, information garnered during public consultations could not be useful in the policymaking process because it did not come from a fully informed public. Similarly I propose that, despite increased involvement of civil society in the justice system, there is still need for more substantive involvement of CSOs in justice policy development. I highlight the improved level of collaboration amongst CSOs and with state organisations, but propose that this increased collaboration should be extended to their involvement in policy development.

Chapter 5: Legal Pluralism and Human Rights

In previous chapters, I described the various relationships between the state and the majority classes, the local elite, donor countries IFIs and their effect on justice policy. I argued that contending with the various group interests has weakened the legitimacy of the justice system. The on-going association between both political parties and criminal gangs has created difficulties in crime prevention by limiting the types of crime that are addressed and resulted in public mistrust of the state. Its dependence on the local elite and multilateral financial institutions for financial stability has directed much of the policy prescription in Jamaica; serving the interests of the donor states, while having limited success in preventing crime in Jamaica. This historical coercion has led to an embedded culture of opportunistic policy transfer for developing states to adopt policies, which are consistent with the international trends on crime prevention, in order to take advantage of funding opportunities from developed states like the U.S and Canada without any coercion from them.

In this chapter, I introduce the concept of legal pluralism. Legal pluralism is defined as the existence of two or more legal systems within the same social field (Merry, 1988; Berman, 2009; ICHRP, 2009). Legal pluralism would argue that Jamaica is pluralistic; in that there are there are two informal systems that operate alongside the formal system; the ‘jungle justice’ system of the garrisons as well as the Maroon justice system that the independent Maroon communities of Jamaica adhere to. I will argue that the legal pluralistic perspective adds to my analysis of the inappropriate policy transfer that takes place for RJ in Jamaica. The recognition of de facto pluralist context would provide a better basis from which to implement a contextual approach to RJ and justice policy generally. Similar to RJ, these systems embrace community driven approaches to justice that reconcile issues within a Jamaican context. However, the Jamaican government can also learn from their failure to provide outcomes that are consistent with human rights standards. I make

the case for using HR as a standard to assess justice in a legally pluralistic jurisdiction. Finally I will analyse the systems and their relationship with each other against this standard.

Legal Pluralism

Legal pluralism essentially refers to the existence of multiple legal systems within the same jurisdiction. This definition covers a range of instances, from co-existing legal systems within the same geographical space to overlapping legal systems within the global community (Berman, 2009; ICHRP, 2009). Within this discussion, I will focus on the legal pluralism as it relates to the relationship between state and non-state entities operating within the Jamaican jurisdiction.

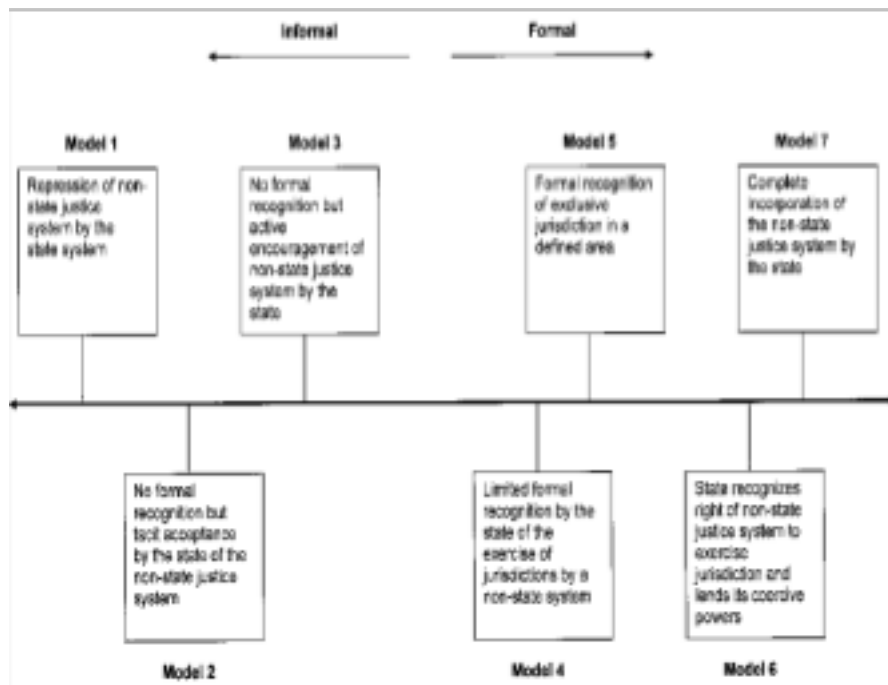
In general, legal pluralism stands in contrast to the notion of ‘legal centralism’, which postulates that any given jurisdiction should have uniform laws for all persons, which are administered by state institutions solely (Merry, 1988; Woodman, 1998; Jackson, 2006)¹⁴². Emerging literature now focuses on the interaction between formal and informal systems and their capacity to influence each other (Merry, 1988; Woodman, 1998; Berman 2009; Jaffe, 2015). More specifically it suggests that formal systems and these normative orderings interact in a way that makes them both dependent on and separate from each other (Merry, 1988; Woodman, 1998; Berman, 2009). In order to capture the bi-directional nature of their interaction, Moore (1973) describes their interaction as part of a ‘semi-autonomous social field’, which is a concept used to encompass the various types of interaction within plural legal orders¹⁴³. The semi-autonomous social field is a space that has the capacity for rule making and compliance of those rules, but can be affected by the norms and customs of the wider environment.

¹⁴² Early work on legal pluralism did not stray far from this centralist ideal, by assuming the dominance of the formal system.

¹⁴³ Plural legal orders are spaces where varying norms and law govern a specific issue within a particular jurisdiction (ICHRP, 2009).

In keeping with this concept, the literature acknowledges the variety of interactions between the state and non-state entities (Forsyth, 2007; Larcom, 2013) (See Figure 5.0).

Figure 5.0 Typology of Relationships between the Formal and Informal systems



Accessed Forsyth, 2007.

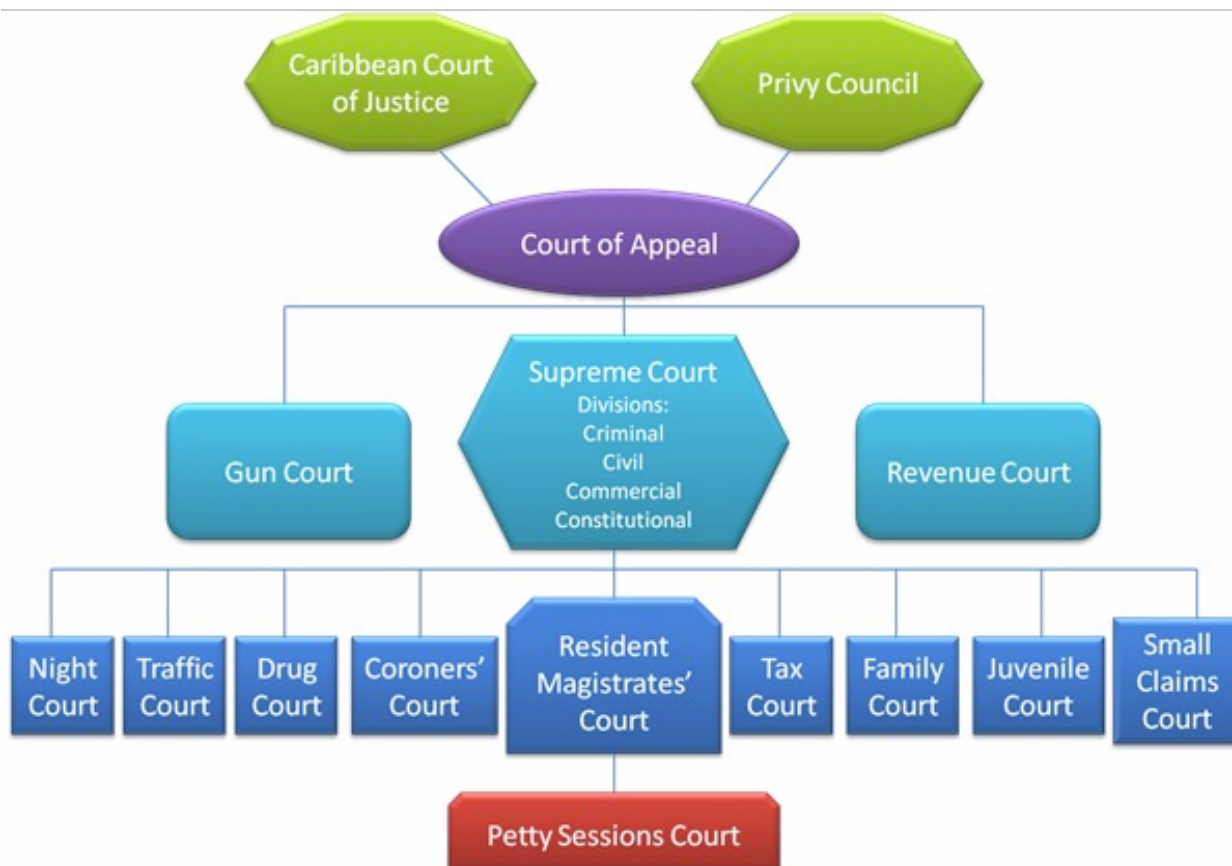
Often thought of as a continuum, the interaction ranges from complete negligence of informal systems by the state, formal endorsement or incorporation of the normative order to some middle ground of semi-autonomy of the normative order (Kotter, 2015; Tamanaha, 2007; Quane, 2013). This range of interactions can be further categorised as strong and weak pluralism (Grenfell, 2013; Merry, 1988; Tamanaha, 2007; Kotter, 2015; Jackson, 2006). Strong legal pluralism is the notion that not all law is administered by the state. There is no assumed superiority of systems and legal systems can exist without having any formal affiliation (Grenfell, 2013; Merry, 1988; Tamanaha, 2007; Kotter, 2015; Jackson, 2006). On the other hand, weak pluralism makes reference to the idea that law is only valid when it is recognised by the state in some way (Grenfell, 2013; Merry, 1988; Tamanaha, 2007; Kotter, 2015; Jackson, 2006). Within weak pluralism, there is some incorporation of non-state law by the state, although it is usually considered to be inferior to state law (Kotter, 2015; Jackson, 2006).

The Formal Jamaican Justice System

Like other post-colonial states, the Jamaican justice system is widely considered to be ‘centralist’: a number of state institutions enforce established state law uniformly without acknowledging the capacity of any other legal system to govern the wider Jamaican public (Merry, 1988; Woodman, 1998; Wojkowska, 2006). These institutions include the MOJ, the court system, police as well as the prison system. The administration of justice falls under the remit of the MOJ and the Court Management Services¹⁴⁴ (CMS) (Slowe & Solomon, 2014; MOJ, <http://www.moj.gov.jm/>, accessed, March 1, 2016). The MOJ has a range of justice related responsibilities that aim to encourage adherence to the law, protect the rights of citizens and promote awareness of citizen duties, including the improvement of the justice system.

¹⁴⁴ Jamaica is a common law jurisdiction. Most British colonies maintained the much of the colonial laws after becoming independent states. As in the British justice system and that of other Commonwealth jurisdictions, the court structure is based on a hierarchical system of courts that have varying gradations of authority, which is highlighted in Chart 5.0 (Elias, 1955; UNDP, 2012; Slowe & Solomon, 2014; The Supreme Court of Jamaica, <http://www.supremecourt.gov.jm/content/legal-system>, accessed March 1, 2016).

Chart 5.0 Diagram of Court Structure Hierarchy in Jamaica



Informal Systems

Legal pluralism is often understood to be a condition of the colonial experience (Merry, 1988; Woodman, 1998; Zips, 1998; Tamanaha, 2007; Berman, 2009; Jaffe, 2015). Many multi-cultural post-colonial jurisdictions have developed distinct legal systems in response to the imposition of colonial law (Tamanaha, 2007; ICHRP, 2009; Megret, 2013)¹⁴⁵. In many jurisdictions local law was acceptable only if it was considered to be consistent with the principles of written

¹⁴⁵ Early studies noted that it was common practice for imperialist nations to transfer their own legal systems to colonies, which resulted in European law working alongside local law (Merry, 1988; Woodman, 1998; Tamanaha, 2007; Berman, 2009). In his discussion on colonial courts, Elias (1955) notes that most colonial systems had a 'two-tier' judicial system; a centralised British court system that applied systemised English law and an indigenous law system (likely to be void of formal legal structures and forego consistent application of pre-determined punishment) (Elias, 1955; Merry, 1988). The formal British system became dominant and sought to restrict the use of local law (Elias, 1955; Merry, 1988; Woodman, 1998).

colonial law (Merry, 1988; Woodman, 1998; Berman, 2009). Despite its colonial background, there is limited literature on legal pluralism within the Caribbean (Jaffe, 2015). In the case of Jamaica, a pluralist analysis identifies at least two more justice systems; the Maroon Justice system and the Jungle justice system within the garrisons.

The development of the Maroon justice systems stands as an example of strong pluralism. Consistent with Model 5 (Figure 5.0) this system is formally recognised by the state for the administration of justice for a particular group within a defined area, where the process of forming rules and compliance to them stems from inherent patterns of social norms (Forsyth, 2007). The Maroon justice system is rooted in the cultural norms and social orderings of the Maroon community. As an independent system, this system has limited interaction with the state system, but does not conflict with its values.

The Maroon justice system was created by a group of enslaved Africans as part of their independence from the colonial state (Zips 1996; 1998; Besson, 1999; Jaffe, 2015). In 1655, during the transition from Spanish rule to British colonialism, many enslaved Africans fled to the hills in Jamaica in fear of re-enslavement and the genocide of the Arawaks they had witnessed under Spanish rule (Zips 1996; 1998; Besson, 1999; Jaffe, 2015). This group of runaway Africans was referred to as the Maroons¹⁴⁶ (Jaffe, 2015). Until 1738, the Maroons engaged in a series of rebellions against the British. Unable to penetrate the Maroon communities, the British conceded to a Peace treaty in 1739. This enabled the Maroons to live autonomously within the interior lands located between Trelawney Town and the cockpits of Jamaica, including Accompong town in the parish of St. Elizabeth (see Figure 5.1).

Figure 5.1 Map of Cockpit Country (Maroon Territory)

¹⁴⁶ Maroon is a word that is derived from the Spanish word, 'Cimarron', which means runaway.



(<http://www.thesportsseer.com/2013/08/01/cammack-village-the-accompong-town-of-arkansas/>, accessed March 8, 2016)

The Maroons became autonomous in 1962 upon Jamaica becoming independent¹⁴⁷ (Golding, 2019). It was agreed that the Maroons should maintain their own leadership and develop their own legal and political systems. In exchange for their freedom however, the Maroons agreed to act as part of the British military force (Jaffe, 2015). Maroons were given the liberty to manage

¹⁴⁷ Subsequently, the Jamaican government has further acknowledged these rights under the [UN Declaration on the Rights of Indigenous Peoples](#) (2007), including the "right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions." It also states the "right for self-government in matters relating to local affairs," as well as "ways and means for financing autonomous functions". (UN, 2007). Also, The International Labour Organization (ILO) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries was adopted on 27 June 1989, entered into force on 5 September 1991).

their own conflicts. However, all conflicts that involved a British person were to be handled by the formal courts.

More recently, there has been an emergence of informal systems created by non-state governmental groups, such as criminal organisations, as seen with the jungle justice systems of the garrisons (Roseveare, 2013; Jaffe, 2015). Typically, these non-state legal orders are examples of weak pluralism. They are not formally recognised by the state and operate parallel with the formal justice system (Roseveara, 2013; Jaffe, 2015). Similar to other post-colonial states, Jamaica continues to suffer from weak state law that fails to provide effective avenues of justice, which has a particular effect on the rights of the majority classes, who are more affected my crime (Merry, 1988; Tamanaha, 2007; Berman, 2009; Megret, 2013). In weak states, the government and public are less inclined to abide by formal law (Tamanaha, 2011). In response to this ineffective form of justice and subsequent mistrust of the system, Jamaica has seen the development of informal justice systems. These informal systems, often referred to as non-state legal orders, are popular amongst those who are unable to access justice through the formal system (ICHRP, 2009; Megret, 2013; Kotter, 2015).

The jungle justice system is considered to be a type of hybrid state that has emerged, in part, from the formal system and its failure to administer justice effectively. These 'hybrid states', share authority and legitimacy between the formal and informal, overlap in responsibilities and influence each other (Jaffe, 2015). Like many other developing states, an informal justice system has developed in response to the inadequacy of the state to address crime in Jamaica, particularly those unrelated to organized crime and political violence (Sives, 2002; Levy, 2012; Charles & Beckford, 2012; Quane, 2013; Kotter, 2015).

This failure to address crime by the formal justice system had a disproportionate effect on individuals living within inner-city communities in Kingston and rural communities across Jamaica. In response, an informal justice system, referred to as 'jungle justice' has developed within the garrisons. I have noted the economic downturn in Jamaica of the 1970s and the newfound wealth of dons, which enabled them to take on state-like functions, including justice (Charles 2002; Johnson & Soeters, 2008; Charles & Beckford 2012; Thomas, 2013; Blake 2013). Dons, who had become feared leaders within the garrisons, were natural candidates to lead the emergence of an informal justice system, referred to as 'jungle justice', to address the increasing domestic crime that was taking place within garrisons, which the state neglected (Johnson & Soeters, 2008; Jaffe, 2012; Charles & Beckford, 2012; Sives, 2012; Jaffe, 2015).

This relationship is consistent with formal independence between the two systems (Model 2). Forsyth's typology (2007) (Figure 5.0) denotes that there is no formal recognition given to the non-state system, but simply ignores its handling of disputes and in fact, unofficially supports the capacity of the non-state system to address crime. As will be discussed, the state and the jungle justice system interact often, as the state is often dependent on dons to reconcile crime within the garrisons.

Human Rights

Human rights are defined as, 'rights, not benefits, duties, privileges or some other perhaps related practice' that individuals are entitled to due to their status as human beings or 'deriving from the inherent dignity of the human person' (Donnelly, 1982). The universal aim of HR is to provide protection for all individuals against the power of the state in order to ensure that people have the liberty to develop some of the capacities that they need to lead autonomous lives and participate in democratic politics.

One might ask why HR law is accepted as an authority on justice and how the state treats its citizens in general. First, HR law seems to be respected by a majority of jurisdictions in spite of social, cultural and political differences (Franck, 2001; ICHRP, 2009; Bendana & Chopra, 2013). This transnational nature of international HR standards is signified by the widespread ratification of HR treaties. Regardless of their compliance, 167 countries have ratified the *International Covenant of Civil and Political Rights* (ICCPR), which protects some of the most fundamental HR, such as the right to life and liberty (United Nations Treaty Collection, 2012)¹⁴⁸.

HR standards provide justification for individuals to not violate each other's rights. Within a HR framework, crime is viewed as a failure of individuals or officials to demonstrate equal respect for another by inflicting some harm (Griffin, 2008; Boonin, 2008). HR instruments are based on the principle that all individuals have a certain set of shared vulnerabilities and potential for development as humans (Donnelly, 1982; Brown & Wilkie, 2002; Alston et al, 2008). Human beings should respect each other in virtue of these shared characteristics. HR law sees proportionate punishment as a way of responding to the failure to demonstrate equal respect (Griffin, 2004; Smit & Ashworth, 2004; Griffin, 2008; Perlin & Dlugacz, 2009; Penal Reform International, 2010). Equal respect is not only an attitude between individuals; it is the attitude that should be embraced in the administration of justice, as long as it does not compromise the well being of the majority (Nussbaum, 1996; Griffin, 2008; Webster, 2010).

What kind of approach does HR law recommend in the administration of justice? The HR approach to punishment strikes a balance between protecting the offender, addressing the needs of the victim and protecting the wider community (Griffin, 2004; Smit & Ashworth, 2004; Griffin, 2008; Perlin & Dlugacz, 2009; Penal Reform International, 2010). When a crime has been committed, the victim(s) seeks to address the violation against their dignity. HR acts as a guide to

¹⁴⁸ Jamaica has ratified 21 UN treaties (United Nations Treaty Collection, 2012).

ensuring that the victims' needs are addressed. The UN's Basic Principles of Justice for Victims of Crime and Abuse of Power identifies a range of activities that should be offered to the victim including: (i) the provision of supportive services, (ii) the provision of recourse, (iii) restitution and, (iv) prompt access to justice by way of opportunities for redress through formal and informal procedures (United Nations, 1985). The Basic Principles highlights the importance of incorporating the victim into the justice process, as a way of ensuring that their needs can be addressed adequately (United Nations, 1985). Evidence across jurisdictions indicates that when these needs are addressed, victims are more satisfied with the justice process (Van Wormer, 2009; Cattaneo & Goodman, 2009; Ptacek, 2009; Julich, 2010).

HR protect the rights of offenders, by setting minimum standards of humane imprisonment, including measures for facilitating an offender's return to society. Punishment should facilitate offenders' recognition of the harmful behaviour as well as encourage a good relationship with the community. If offenders were not held accountable, the harm caused would remain unaddressed, demonstrating a lack of respect for the victim's dignity as well as their own. Ultimately the identification of offenders as responsible agents that are equal to their peers would be neglected (Miethe & Lu, 2005). However, HR instruments recognize that the general treatment of offenders from arrest to release should result in some positive behavioural change. The Standard Minimum Rules for the Treatment of Prisoners states that the overall aim of punishing offenders is their successful reintegration into the society after incarceration, and detail the way in which this should be done (United Nations, 1955). In addition, the Standard Minimum Rules proposes that by holding offenders accountable in a way that allows them to maintain a life as close to liberty as possible, they are less likely to reoffend. This reduces further risk to the public (United Nations, 1955). While offenders must be held responsible for the failure to demonstrate equal respect to others, they also must learn how to handle the responsibilities that accompany normal life. This may be achieved

through respecting the rights of offenders, particularly those that promote the individual responsibility (Penal Reform International, 2010; United Nations, 2006). Many jurisdictions that adopt this approach to holding offenders accountable have been successful in crime prevention (Uggen, 2000; Walker & Clark, 2007; Uggen & Staff, 2001; Svankvist & Nylen, 2009).

The HR framework recognises a role for the wider community in the administration of justice (Maletzky & Steinhauser, 2002; Twenge et al. 2007; Jacobson, Phillips & Edgar, 2010; Grimwood & Bermann, 2012). It acknowledges the interconnectedness of humanity by indicating that all have a responsibility to address harm. Principle 4 (b) in the Principles of Justice for Victims of Crime and Abuse of Power calls upon states to,

‘promote community efforts and public participation in crime prevention. Both the Basic Principles of Justice for Victims and the Basic Principles and Guidelines on Access to Legal Aid in Criminal Justice call upon the community to provide various forms of assistance to victims including material, psychological and medical support’ (United Nations, 1985; 2012).

Community involvement serves as a way of bringing awareness to the community regarding the underlying factors that contribute to crime as well. Their interaction with offenders through reintegration programmes, for instance, should help to dispel stereotypes and uninformed feelings of vengeance against offenders (Braithwaite, 2002; Murphy 2003; Harriott, 2009). In turn, if an offender realises that his community will support him, an appreciation for respecting the rights of others in order to retain respect for their own rights should develop (Ward et al. 2007).

Most justice systems and HR standards share the overall aim of preventing crime and acknowledging harm by holding the wrongdoer accountable (McGregor, 2001; Griffin, 2008; Penal Reform International, 2010). What the HR approach might prove useful for is helping to establish guidelines as to how harm should be addressed, how the wrongdoer will be reintegrated into the community successfully and how the community might be involved through both formal and informal systems. Within formal systems, HR may help to limit the potential for oppressive state

structures to impose inhumane punishment, neglect victims' needs and exclude the community. As for informal systems, HR instruments could provide the necessary guidelines for implementing check and balances that ensure that practices are enforceable, do not impose inhumane punishment and limit susceptibility to bias and corruption.

Human Rights and Legal Pluralism

There is limited academic discussion of HR and pluralism (Provost & Sheppard, 2013). However, there is increasing acknowledgement of legal pluralism by HR can be seen (Tamanaha, 2007; ICHRP, 2009; Quane, 2013). Since 2002, the UN has formally acknowledged the role of informal systems in improving access to justice (Grenfell, 2013). Some HR instruments such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, as well as the ICCPR have acknowledged informal procedures as a valid pathway to justice (Dexter & Ntahombaye, 2005; Wojkowska, 2006; Danish Institute of HR, 2012). The 2007 Declaration on the Rights of Indigenous Peoples ¹⁴⁹ calls for the respect the right of these groups to self-government and maintenance of their judicial systems (United Nations, 2007; ICHRP, 2009; Quane, 2013). Also, regional documents such as the African Commission on Human and People's Rights emphasize the value of traditional courts to the administration of justice (ICHRP, 2009).

HR has developed a view of legal pluralism that embraces the benefits of informal justice as an additional pathway to justice, as long as fundamental HR are not violated (Tamanaha, 2007; ICHRP, 2009; Picq, 2012 Bendana & Chopra, 2013; Quane, 2013). This approach to legal pluralism is both encouraging and limiting (ICHRP, 2009; Quane, 2013; Provost & Sheppard, 2013). HR values informal systems and their ability to increase access to effective justice, particularly in jurisdictions where the formal system has limited resources and weak state law. However, they limit

¹⁴⁹ This is a non-binding standard (ICHRP, 2009).

the operations of informal systems as well, where there is potential for violation of fundamental HR of individuals (ICHRP, 2009; Picq, 2012; Grenfell, 2013; Quane, 2013; Bendana & Chopra, 2013).

I propose that the literature on HR and pluralism advocates a type of weak pluralism (Tamanaha, 2007; ICHRP, 2009; Quane, 2012; Megret, 2013; Grenfell, 2013). More specifically, it encourages the recognition of informal systems as long as those systems do not interfere with the wider public interest. The state should recognise informal systems in their ability to uphold the rule of law by allowing groups to be responsible for the administration of justice. Ideally, informal systems should not oppose the state and value the support that states can provide in terms of enforcement and monitoring and supervision (Tamanaha, 2007; ICHRP, 2009; Quane, 2012; Megret, 2013; Grenfell, 2013).

In keeping with this approach, the literature indicates that informal systems should be (i) voluntary: (ii) driven by the community, (iii) consistent with HR, and (iv) under the supervision of the state (ICHRP, 2009; Chopra & Isser, 2012; Grenfell, 2013; Megret, 2013; Quane, 2013). There are concerns from legal pluralists that the imposition of external legal systems neglects cultural difference and group rights that do not conform with those of the state (ICHRP, 2009; Provost & Sheppard, 2013; Quane, 2013). This can be seen in the case of colonialism and the incorporation of British common law in post-colonial states, which did not consider the cultural and social context of an independent Jamaica. Also, states may use informal systems to reinforce their own laws (Chopra & Isser, 2012; Picq, 2012). Therefore, instead of making informal systems subject to state law, which might reinforce prejudiced social and cultural norms that affect both systems, international HR must be the measure against which these informal practices are benchmarked.

Normative orders are valued because of their contextual, flexible nature and cultural familiarity (Buscaglia & Stephan, 2005; Wojkowska, 2006; Quane, 2012; Megret, 2013; Grenfell,

2013; Kotter, 2015). In order to maintain these benefits, their practices must continue to be shaped primarily by the people who use them. If communities are no longer the source of law practiced within these informal systems, the notion of and benefits attached to legal pluralism are invalidated. These systems should be recognised and work in conjunction with the state, rather than working in opposition of it. In this chapter I have suggested that a HR perspective on legal pluralism allows for both informal and formal systems to work together towards a shared goal of public protection and equal access to justice.

Having established HR standards as a normative framework to assess justice systems, I will now assess the range of systems outlined in the previous chapter. Similar to other developing states, the Jamaican justice system is ineffective in its ability to uphold the rule of law, including access to justice, providing equality before the law, due process and accountability (Wojkowska, 2006; Tamanaha, 2007; Chopra & Isser, 2012; Picq, 2012; Bendana & Chopra, 2013). Identifying the issues that plague the formal system will shed light on the underlying issues that should be addressed. More specifically, by working with gang leaders and Maroons the Jamaican government would have worked towards developing a ‘domesticated’ national RJ policy that considers the political, social and economic context of the jurisdiction. Dons would have provided insight as to the interests of Jamaican citizens who typically fail to gain access to the formal justice system. Also, the visible support of trusted leaders within the community might have had a positive effect on the perception of RJ as a state run programme, given the level of public mistrust for the state.

Human Rights Assessment of Jamaican Formal System

Access to Justice

One of the most fundamental expectations of a formal justice system is prompt access (Galanter, 1981; Buscaglia & Stephan, 2005; Wojkowska, 2006). As discussed a number of HR

standards demand prompt and affordable legal representation and access to courts (United Nations, 1966). However, there are a number of practical issues that contribute to the consistent inaccessibility of the formal justice system in Jamaica, such as the increasing case backlog, its physical inaccessibility as well as associated expenses (Buscaglia & Stephan, 2005; Wojkowska, 2006; Norwegian Council, 2009; UNDP, 2012). The Jamaican government has identified lack of access as one of the main issues facing the justice system (ESSJ, 2012; Moncrieffe, 2014; James, 2014). In 2012, 1213 cases were carried forward. In addition to the 341 new cases, only 20.7% of cases were settled (Moncrieffe, 2014). In 2013, the Public Defender's office close 10% of the total complaints filed (312) and had 282 cases pending with an estimated 1,000 new cases to be handled in 2014 (Harriott & Jones, 2016). A number of factors contribute to this severe backlog, including a lack of professional and financial resources, poor investigation and limited modernisation of the courts (Rowat, Malik & Dakolias, 1996; UNDP, 2012; Moncrieffe, 2014). In the case of sexual offences, several delays were due to the high cost of processing rape kits¹⁵⁰ In 2013, there were 921 rape kits that were waiting to be analysed (Jamaica Gleaner, <http://jamaica-gleaner.com/power/49601>, accessed March, 25, 2016). Some of my interviews with members of the judiciary confirmed this issue. During my interview with the Senior Puisne¹⁵¹ Judge , Justice Marva McIntosh (DPP

¹⁵⁰ The cost of analysis per rape kit is between 200 and 250 US dollars (Jamaica, Gleaner, <http://jamaica-gleaner.com/power/49601>, accessed March 25, 2016).

¹⁵¹ This is a term from English common Law that refers to any judge that is not a chief judge.

Offices, Kgn, 28/11/14), she noted that some of the biggest contributors to backlog were the lack of professional and financial resources and the failure of police to ensure the safety of witnesses¹⁵².

Bias and Corruption

Those who have the financial means and time to access the Jamaican justice system might still face issues of bias and corruption. The lack of impartiality and illegal conduct of legal authorities is in direct contravention of international standards embedded in the ICCPR, the Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power and the Basic Principles on the Independent Initiative (CSI) (Government of Jamaica, 2009). In addition, international not-for-profit organizations such as UNICEF were involved heavily with the provision of training and general violence prevention efforts (Leslie, 2010). Article 14 of the ICCPR seeks to ensure the equality of all persons who should go before an impartial judicial system (United Nations, 1966). In addition, The Code of Conduct for Law Enforcement Officials expressly prohibits the police from engaging in any corrupt¹⁵³ activities (United Nations, 1979).

Issues of corruption affect the ability of citizens to access effective justice in Jamaica. While the Jamaican judiciary has a reputation of honesty and professionalism, there is evidence of corruption within law enforcement (Levy & Spiller, 1994; Golding 2012, UNDP, 2012).

Unfortunately the JCF has become an extension of the political system, which delegitimises the

¹⁵² Many Jamaicans cannot afford to access the justice system, as legal representation can be expensive. While legal aid is available through the Kingston Legal Aid Clinic (KLAC), it is too understaffed to meet the needs of the Jamaican population. Also, legal aid in Jamaica is not free. In fact KLAC is dependent almost exclusively on client fees for the sustainability of the organization (MOJ, <http://www.moj.gov.jm/legal-aid-clinic>, accessed May 25, 2016). In 2012, legal aid representation accounted for 2163 persons only (Moncrieffe, 2014). This limited capacity results in limited use of the legal aid system.

¹⁵³ According to this Code of Conduct, corruption is defined as ‘any commission or omission of an act in the performance of or in connection with one’s duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted (United Nations, 1979).

formal legal system further. There are 3 predominant policing styles that law enforcement agencies embrace typically (Zhao, 2005; Hawdon, 2007; Harriott, 2007)¹⁵⁴. In Jamaica, the *watchman* style of the JCF places emphasis on creating social order, rather than crime reduction (Harriott, 1997; 2007; Headley, 2002; Jamaica Constabulary Force, <https://www.jcf.gov.jm/about-us/history>, accessed September 20, 2017). In emphasising the maintenance of order, there is a large amount of discretion granted to individual officers. Usually, this results in officers being willing to violate laws if they believe that it will maintain order and reduce resistance from citizens. I will now describe some of the predominant characteristics of the JCF, which include: (i) loyalty to power, (ii) work avoidance, and (iii) indiscriminate use of violence (Harriott, 1997; 2000; 2007).

Consistent with the watchman policing style, the JCF values maintenance of social order over the protection of citizens' rights. JCF demonstrates a focus on maintaining political order, where primacy is given to preservation of power of the state (Harriott, 1997; 2000; 2007; Headley, 2002; Robotham, 2003). As a result, controlling the public and maintaining order within communities have become secondary functions. This emphasis on state protection is highlighted by the relevant Jamaican legislation on law enforcement, which uses legislation to maintain an authoritarian approach to governance by limiting citizen political involvement¹⁵⁵. There is evidence to suggest that JCF officers respond to dons' orders as well (Harriott, 1997; Headley, 2002;

¹⁵⁴ The *legalistic* approach emphasises upholding the principles of law and protocols that follow. The actions of officers are based on the idea that laws should be applied universally without taking into consideration the varying situations across communities and groups (Hawdon, 2007; Harriott, 2007). As a result, individual officers exercise discretion rarely; almost everything is done 'by the book'. On the other hand, the *service* style of policing focuses on protecting its citizens. It demands that law enforcement treats all citizens' requests equally. As a result, their strategies are designed to build a sense of trust within the society by gaining an understanding of the social norms within the various communities. Unlike *legalistic*, *service* policing focuses on problem solving. Agencies that embrace this policing style are willing to incorporate non-traditional approaches such as community policing and alternatives to incarceration in order to gain resolution (Harriott, 2007; Hawdon, 2007).

¹⁵⁵ For instance, the 1857 Riot Act imposes a sentence of life imprisonment for any group of 12 persons or more that seek to disturb the peace, thereby limiting the capacity for political protest.

Robotham, 2003). Members of the JCF have been implicated in the drug trade through their ties with corrupt politicians and gangs alike in exchange for promotions or other personal benefits (Harriott, 1997; 2002; Headley, 2002; Acosta, 2005; Charles & Beckford, 2012; Jaffe, 2013)¹⁵⁶.

As a result, the literature notes a failure of the JCF to carry out their work efficiently, including decreased mobilisation, active discouragement of citizens to make reports and mistreatment of those that do, as well as the complete neglect of certain crimes altogether (Amnesty International, 2006; Johnson & Soeters, 2008; Gaskins, 2008; Charles & Beckford, 2012). Crimes such as rape and murder are not properly addressed (Charles & Beckford, 2002; Headley, 2002; Amnesty International, 2006; Harriott, 2007; Sives, 2012). Data from the Economic and Social Survey of Jamaica stated that between 1999 and 2008, the JCF, cleared half of the cases of carnal abuse and rape only. In 2008, 49% of the police investigations were closed without conviction (Blake, 2013)¹⁵⁷. In 2011 there were 23 convictions of rape versus 41 acquittals in rural circuit courts in Jamaica (The Office of the Director of Public Prosecutions, 2014). However, within that year there were 2,671 reported cases of rape (Jamaica Observer, http://www.jamaicaobserver.com/columns/When-rape-becomes-common_12667494, accessed March 25, 2016). This demonstrates

¹⁵⁶ In 2011, 137 officers were denied reenlistment because of allegations of corruption (UNDP, 2012). Some of my interviews reiterated the corrupt nature of the police force. The 2012 JNCVS report indicated that 57.3% of participants felt that police corruption was a significant problem in Jamaica. In addition, 56% of those Jamaicans felt that corrupt individuals were not likely to be punished for their behaviour, indicating the perceived lack of accountability for corrupt behaviour (Bourne, 2010). In her interview, Nancy Anderson (attorney, NMLS, 1/12/2014) recounted instances of police officers creating false witness statements to achieve a conviction in court. Judith Wedderburn (Director, FES offices, Kgn, 10/10/2014) also highlighted the failure of police officers to adequately investigate allegations of sexual violence. She noted that there is a lack of due diligence in cases, where officers will encourage the complainant to drop the case or not show up for a court hearing.

¹⁵⁷ Anecdotal evidence indicated that women are at risk of further harm from the police by way of sexual victimisation. There was unresolved investigation into a case where a woman who, upon reporting her victimisation to the police was then raped by 3 police officers at the station.

limited effort and efficiency, as much of law enforcement is carried out by a small number of officers.

When crime *is* addressed, it is often by excessive use of force, which puts Jamaicans at risk. *Watchman* style policing achieves control by targeting and subjecting marginalised populations to aggressive techniques indiscriminately (Harriott, 2007; Hawdon, 2007). It is assumed that the watchman style of policing will induce law-abiding, conforming behaviour in inner-city communities that are assumed to be inherently lawless (Harriott, 2007). Instead, the discretion granted to law enforcement results in little respect for legal protocol and the needs of citizens (Harriott, 2007; Hawdon, 2007). Law enforcement agencies are able to ignore the principles of law and citizens' rights, resorting to military-like tactics that lend themselves to aggression and control. In keeping with the *watchman* style, the JCF has a long-standing history of indiscriminate use of aggressive, violent tactics, justified as a necessary response to increasing levels of violence¹⁵⁸.

Lack of Contextual Legislation

Another contributing factor to ineffective justice that is common within developing countries is the failure of state legislation to reflect the realities and cultures of the individuals who seek redress. Much of the literature on the development of legislation in developing countries

¹⁵⁸ There have been consistent reports of the police involvement in vigilante killings (Allen, 1997; Harriott, 1997; Charles, 2002; Headley, 2002; Harriott, 2003; Fearon & Latin, 2006). In 2001 the police admitted their role in at least 135 extra-judicial killings (Headley, 2002). In 2012, only 19 of the 267 officers that were charged with civilian abuses were convicted (Moncrieffe, 2014). There have been a number of Commissions of Inquiry held in order to investigate the behaviour of the JCF and their use of excessive force. However they only serve to underscore the lack of accountability, as they usually find no fault with the use of force by the police or any other state-led action (Headley, 2002; Amnesty International, 2003; Jones, 2010). For instance, in 2001, 28 people died and 60 injured in an operation led by Reneto Adams, a police commissioner with the aim of seizing illegal weapons in Tivoli Gardens (JLP stronghold). The forensic report and testimony from members of the JCF that testified during the subsequent Commission of Enquiry indicated that the police were shooting randomly with no specific targets, nor was there any intelligence that pointed to specific individuals being in possession of weapons (Amnesty International, 2000). However, the commission found that no one was responsible for the 28 persons who died at the hands of the JCF.

highlights the common use of a ‘top-down’ approach in law-making, which does not protect citizens from the context-specific risks faced (Buscaglia & Stephan, 2005; Rachlinski, 2006; Tully, 2007). The top-down approach creates general principles that are often abstract in nature and applies them through a centralised authority for individual cases (Rachlinski, 2006). This is contrast to the bottom-up approach of HR standards, where individual situations contribute to the development of general principles (Rachlinski, 2006).

The failure of legislation to address the realities of Jamaicans is demonstrated through the 2009 SOA. According to the literature on sexual violence within the region, gender bias is one of the main issues that criminal justice system in Jamaica and other Caribbean islands face (Foglesong & Stone, 2007; Darby, 2009; United Nations Development Programme, 2012; Greenberg & Agozino, 2012; James, 2014). As mentioned, women are entitled to treatment before the law that is equal to men. However stereotypes surrounding sexual violence have a significant effect on the handling of sexual offences by the justice system.

First, most of the legislation is gender specific. While it is true that females are the main victims of sexual violence and males are typically the perpetrators, this does not obliterate the fact that there are other forms of rape that go beyond the male-female pattern (Rumney, 2008). The definition of rape as non-consensual heterosexual intercourse leaves female victims victimised by same sex offenders without recourse and male victims without the same level of protection, since non-consensual anal and oral penetration carry a lesser penalty. This definition carries the parochial, sexist values of the past despite evidence indicating the prevalence of male victimisation (http://www.jamaicaobserver.com/news/more-men-than-women-killed-in-domestic-violence-montague-reveals_108693?profile=1338&template=MobileArticle, accessed, September 29, 2017). Currently, the marital rape law in the 2009 SOA states that a man can be accused of raping his wife only under circumstances relating to the male having an STD or the marriage being in the process of

dissolution, thereby limiting the access to justice for women who are being victimised by their spouses.

Inhumane Treatment of Prisoners

In Chapter 3, I mentioned the severe punishment of offenders. In addition to lengthy incarceration, they are subject to inhumane treatment that violates a range of HR. These issues violate a range of HR principles, as stated within the ICCPR and the Standard Minimum Rules for the Treatment of Prisoners. While incarceration may not be inherently harsh, Jamaica's legislation is severe in that it imposes lengthy sentencing periods without distinction in terms of severity of harm (Green, 1976; Lange & Dawson, 2009; Newton, 2011; Paton, 2004; Dalby, 2011; Newton, 2011; Dalby 2014)¹⁵⁹.

These lengthy periods of incarceration are compounded by poor physical conditions and lack of access to psychological and medical treatment (Morris, 2008; Robottom, 2011; Taylor, Chauhan, Fondacaro, 2012; Roach- Spence; Greenberg & Agozino, 2012; Rodríguez-Díaz & Andrinopoulos, 2012). There have been consistent reports of inhumane living conditions for prisoners in Jamaica, including a lack of medical treatment and unwarranted physical violence despite their commitment to international standards (Country Report on HR Practices, 2001; Amnesty International, 2006; UNDP, 2012; Robottom, 2011). In 2007, it was reported that all 12 prisons in Jamaica were beyond 100% of their capacity (UNDP, 2012; Roach-Spencer, 2012)¹⁶⁰.

¹⁵⁹ For instance, the 2009 SOA states that life imprisonment is a possible punishment for a range of sexual offences, including rape, grievous sexual assault and incest without consideration for the disparity in harm caused. Also, the 2009 SOA embraces the use of lengthy mandatory minimum sentencing, which is legislation that binds courts to impose a minimum period of incarceration for the punishment of crimes, thereby limiting the discretion of the judiciary and making punishment certain (Tonry, 2005). Section 6 (1) (a) of the 2009 SOA imposes a minimum mandatory sentence of 15 years for rape when tried in Circuit Court.

¹⁶⁰ In 2011, the Tower Street Correctional Facility was housing twice its official capacity (Robottom, 2011). Tower Street has a capacity of 900, but generally houses 1663 inmates.

Often overcrowding in prisons and poor conditions leads to health issues, psychological issues and death (Drago, Galbiati & Vertova, 2011). The treatment of offenders is not only out of line with HR, but it is also ineffective in reducing crime and protecting the community¹⁶¹. There are limited efforts to reform the offender. (UNDP, 2012; Moncrieffe, 2014; James, 2014). Many of the principles within the Minimum Standard Rules recommend the use of rehabilitation, which states that rehabilitation should be individualised, accessible consistently to all inmates in order to prepare him for reintegration into society (United Nations, 1955)¹⁶².

Dissatisfaction with the Justice System

These factors hamper the administration of justice within the Jamaican justice system and result in a failure to convict individuals altogether. This leads to a lack of justice for the victims and protection for the wider public. Ultimately these issues tend to diminish public trust in the formal justice system and the rule of law generally (Tamanaha, 2001; Wojkowska, 2006; Norwegian Council, 2009; UNDP, 2012). Evidence indicates that public opinion of the justice system has continued to decline (Sives, 2002; JNCVS, 2012; UNDP, 2012). The 2012 JNCVS report indicated

¹⁶¹ The literature that examines correlations between prison conditions and recidivism indicates that these harsh conditions and mistreatment increase the likelihood for reoffending (Chen & Shapiro, 2007; Drago, Galbiati & Vertova, 2011; Grimwood and Berman, 2012). Although there is limited research on the effect of incarceration and prison conditions in Jamaica, one might infer its ineffectiveness in reforming prisoners from the consistently high reoffending rates. The DCS reported consistently high reoffending rates across prisoners during the 1990s, ranging from 25% to 48% (Taylor, Chauhan & Fondacaro, 2012). In particular, in 1993 there was a spike of 54% in offender recidivism (Taylor, Chauhan & Fondacaro, 2012).

¹⁶² Admittedly, Jamaica has attempted to introduce some form of rehabilitation in prisons (Jones, 2007; UNDP, 2012; James, 2014). Most recently, the MNS received sponsorship from a civil society organization to implement a 'Chess in Prison' Programme. Like other Caribbean countries, lack of capacity and the tendency to maintain the traditional approach to being 'tough on crime', means that there is limited and generalised use of these approaches. While the reports from this programme were positive, only 16 inmates were able to access the programme for 4 weeks (<http://www.loopjamaica.com/content/tower-street-inmates-benefit-chess-prison-programme>, accessed April 1, 2016). In addition, the 2014 Auditor General's report indicated an absence of rehabilitation programmes for sex offenders altogether.

that only 15.5% of Jamaicans think that the courts are doing a good job. Only 17% think that the justice system provides a fair trial for victims. In addition, only 12.8% of Jamaicans think that corrections are doing a good job of reforming offenders.

Assessment of Informal Systems

I will now use HR standards to assess informal justice systems in Jamaica. These systems have a number of benefits that are consistent with similar systems in other jurisdictions, particularly those that suffer from weak state law and public mistrust of the state, including accessibility to justice, contextual assessment of disputes and cultural familiarity (Wojkowska, 2006; ICHRP, 2009 Chopra & Isser, 2012; Picq, 2012; Bendana & Chopra, 2013; Megret, 2013).

Strengths of the Jungle Justice System

As noted by Forsyth's typology, each of the systems has advantages based on their relationship with the state. Despite the fact that this system is marred by a number of issues (which I will discuss later on), many garrison constituents find jungle justice to be a swift, accessible form of justice (Johnson & Soeters, 2008; Blake, 2012; Jaffe, 2012; Charles & Beckford, 2012; Scott, 2014). Jungle justice permits garrison constituents to access justice within their own communities (Johnson & Soeters, 2008; Charles & Beckford, 2012; Blake, 2012). The dons and defence crews, who administer justice, are accessible to community members, since they live in the same geographical space. It is reported that justice can be attained within a few hours or days after the crime has been committed within the garrisons (Charles & Beckford, 2012). Since individuals are well known to each other, information about the crime can be collected quickly and background information about the people involved considered by the don.

Also, the jungle justice system operates within the same cultural boundaries as the formal Jamaican justice system, which demonstrates the potential for informal and formal justice systems

to work in conjunction with each other. 'Jungle justice', bears some resemblance to the formal justice system (Johnson 2006; Galvin, 2011; Blake, 2012; Charles & Beckford, 2012; Jaffe, 2015). When a dispute takes place, the complainant (a garrison community member) will make a report to the don, who acts as a judge in these informal proceedings. The don is responsible for determining guilt and dispensing punishment accordingly. Similar to police efforts, once a complaint is made, the don will coordinate an investigation, which might include speaking to the victim, the wrongdoer and other potential witnesses to the crime (Blake, 2012). Anecdotal evidence indicates that a hearing takes place within a space that acts as a makeshift courtroom, where the don sometimes employs a jury, which is comprised of higher-ranked gang members¹⁶³.

As in the state-operated formal justice system, a severe approach is taken to punishment that is meant to deter offenders from committing crimes in the future. It is the fear of severe punishment or loss of financial assistance that deter persons from committing crimes that are not sanctioned by the don (Johnson & Soeters, 2008; Jaffe, 2012; 2015; Sives, 2012; Blake, 2013). While participation in drug trafficking might be allowed, the don bans any crime that is not sanctioned by him. These crimes include rape and other forms of violence against women, theft, assault, and arson (Johnson & Soeters, 2008; Jaffe, 2012; 2015; Sives, 2012; Charles & Beckford, 2012; Blake, 2013). Although it is not applied to any specific crime necessarily, there is certainly evidence that incarceration is a form of punishment that is used within jungle justice (Leslie, 2010; Galvin, 2011; Jaffe, 2012; 2015; Sives, 2012; Blake, 2013)¹⁶⁴. Also, there is some evidence that dons embrace the use of mediation

¹⁶³ However the don may take on the role of both judge and jury (Blake, 2012).

¹⁶⁴ There is no set code of practice that allocates a certain punishment to a specific crime, giving the don complete discretion in dispensing punishment. Fowl coops, where chickens are reared and housed, act as a type of prison for offenders within the garrison. Persons awaiting conviction, or detainees, may be placed in these 'cells' as well. Dependent on the severity of the crime, offenders may be denied food or water for specific intervals (Galvin, 2011). Other forms of punishment include non-fatal shootings, beatings and the death penalty (Johnson & Soeters, 2008; Jaffe, 2012; 2015; Sives, 2012; Blake, 2013).

and financial restitution for less serious crimes such as an inability to repay personal loans (Charles & Beckford, 2012).

As a result of the close links between the state and the jungle justice system, dons assist in the administration of justice (Forsyth, 2007). In states with weak legal institutions, it is common for informal systems to become the more dominant form of justice (Merry, 1988; ICHRP, 2009; Berman, 2009). In Jamaica, the JCF and political parties are dependent on the ability of the don to control violence within the garrisons (Allen, 1993; Johnson & Soeters, 2008; Charles & Beckford, 2010; Jaffe, 2013). The JCF sub-contract matters of law enforcement to dons. Often, the police would be aware of a situation and go directly to the don to resolve the situation rather than investigating it themselves. In 1999, when the police were unable to quell the rioting that took place in response to a surge in gas prices, the police requested for the gang leaders from various inner-city communities to come together to stop the violence (Johnson, 2005; Jaffe, 2015). In 2002, after a series of violent incidents, government called upon dons to ensure peace within the garrisons. Two opposing dons, Zeeks and Justin O’Gilvie declared peace and ensured that there were no further disturbances to the downtown area for the rest of the year. It is stated that under Dudus’ rule of Tivoli, there was a zero murder rate (Jaffe, 2012; Nikken, 2017). This effective collaboration indicates the potential benefits of both systems learning from each other. Inviting members of the informal justice system to have input the development of a national RJ programme that is intended to service the same communities might have proven beneficial.

Strengths of the Maroon Justice System

There is limited academic discussion of the informal justice system of the Maroons, since much of what is known about the Maroons generally is based on oral history (Zips 1996; 1998;

Besson, 1999; Jaffe, 2015)¹⁶⁵. The Maroon justice system handles all types of crimes, ranging from the use of indecent language to land ownership disputes. Community councils respond to crime in a way that is similar to traditional forms of state justice; there is an investigation, statement made by both offender and victim and the wider Maroon community (Zips 1996; 1998; Besson, 1999). The court sessions are presided over by 5 members of the Council including the Auditor General, the Commissioner of Police and the Chief himself. When there is a complaint, it is brought before the Chief, who will hold a session in Maroon Court. Typically, Maroon court is held at the Main Council house, which is a large circular structure that accommodates the participation of the wider Maroon community. These hearings are usually public in order to accommodate the voices of persons who have information on the dispute and indicate how it might have an effect on the wider Maroon community (Zips 1996; 1998; Besson, 1999). The Chief and other elders then make a decision. Punishments range from financial restitution to community service. However there is no set code of punishment in place within the Maroon justice system. Also, corporal and capital punishment are not used as punishment within the Maroon justice system.

Similar to the jungle justice system, the Maroon justice system, as will be discussed, suffers from a number of problems. However, there are a number of identifiable strengths to this system that might prove useful in developing a contextual justice programme in Jamaica. We know that the Maroon justice system is easily accessible. All Maroons can go to the Chief and the council of elders directly to make a claim against someone. Disputes are decided within the boundaries of Maroon state. As the leader of the Maroons, the Chief is responsible for the administration of justice. Anecdotal evidence indicates that he is always available to mediate disputes. Once someone comes forth with an issue, advice can be given immediately or a hearing can be arranged on demand (Zips, 1997; Zips, 1998; Friedman, 2016). In addition, there is no financial cost expected of

¹⁶⁵ Due to the relative lack of crime, Zips (1996) was unable to experience a Maroon court process first-hand.

individuals for the administration of justice (Zips, 1998). This means that justice can be swift and inexpensive within the Maroon justice system.

In addition, the presence of the Maroon system increases access to justice. More specifically, the formal recognition of the Maroon system as independent by the state improves access to justice. Maroons are legally allowed to use both the Maroon justice system as well as the formal justice system. This gives the Maroon community choice in terms of the approach they wish to embrace.

This may be beneficial depending on the type of crime being addressed. For instance, the formal court system, acts as a court of appeal for all Maroon trials, particularly for murder and other violent disputes. This, again increases access to justice, since, as will be discussed shortly, is beneficial given the lack of enforcement capacity seen in the Maroon justice system generally.

Maroons are likely to feel more comfortable with the justice system as it is rooted in the same norms and values that dictate their daily existence. The Maroons define their own norms and procedures, which allows the flexibility needed to service the community in accordance with their needs (Forsyth, 2007). Generally there is more primacy given to communal ownership, self-sustainability and direct input from the community and those most affected by the crime (Dundas, 2007)¹⁶⁶. Usually, this is achieved by the imposition of some consensual settlement of conflict in the interest of maintaining the Maroon tradition of communal land ownership or through reference to the boundaries set by Maroon authorities. The lack of a set code for punishment in the Maroon justice system allows flexibility in determining punishment.

¹⁶⁶ The decisions that arise from Maroon Court are based on what Zips (1991) refers to as *communicative rationality*. This non-punitive form of rationality dictates that decisions should be based on social justification.

The strength of the Maroon justice system is its foundation in contextual justice¹⁶⁷.

Respected elders are responsible for carrying out justice based on a complete knowledge of the persons involved, rather than just the facts of the case. Also, the process is participatory; public hearings permit individuals to comment throughout the proceedings. As discussed, the inclusive and flexible nature of a justice forum is likely to increase the compliance with the outcome, especially if the outcome is geared towards the satisfaction of all persons involved and the wider Maroon community. On the other hand, the system does have some power constraints built into the process. Because the Chief consults with the council of elders decisions are not being made unilaterally. The Council must authorise all decisions made, particularly as it relates to land disputes (Zips, 1996; 1998; Friedman, 2016 Accessed April 1, 2016). In fact, the Maroons' justice system is a reflection of the effort to retain their cultural emphasis on community and land ownership¹⁶⁸.

This accessible, tailored approach to justice allows for a more effective response to crime and increased satisfaction of those who engage with these systems (Buscaglia & Stephan, 2005; Wojkowska, 2006; Mehmood & Chaudry, 2015). Across jurisdictions, increased popularity of informal justice systems has led to increased satisfaction of those seeking justice as well as reduced court burden and overcrowding in prisons (Erlanger, Chambliss & Melli, 1987; Stern, 2001; Buscaglia & Stephan, 2005; Wojkowska, 2006; Mehmood & Chaudry, 2015). The relative success

¹⁶⁷ Contextual justice is understood as any dispute resolution process that considers the historical context of all parties and the relationships between them (Buckley, 2012; Robinson, 2006). It is a pluralistic approach that embraces different principles dependent on the contextual factors at play in the situation being addressed (Buckley, 2012). This is in contrast to the Universalist approach to justice that embraces the same principles regardless of context.

¹⁶⁸ *Kromanti* draws on the shared experience of enslaved people in the Caribbean; it incorporates a multitude of African norms as well as European approaches to structure and organization (Zips 1996; 1998; Besson, 2011; http://www.daviddfriedman.com/Academic/Course_Pages/legal_systems_very_different_12/Papers_12/MAROONS%20James.htm. Accessed April 1, 2016). *Kromanti* emphasizes the communal approach to sharing land and the cultural emphasis on maintaining social harmony (Zips, 1998; http://www.daviddfriedman.com/Academic/Course_Pages/legal_systems_very_different_12/Papers_12/MAROONS%20James.htm. Accessed April 1, 2016).

of informal systems in Jamaica might be indication of the potential for the formal incorporation of informal justice to have a similar effect of reducing court backlog and other practical issues facing the Jamaican justice system.

I propose that the Jamaican government should have considered these systems in their development and implementation of a national justice programme, given the obvious effect on the administration of justice. This is consistent with literature that indicates the failure of justice reform projects that fail to consider informal systems (Tamanaha, 2007; Chopra & Isser, 2013; Quane, 2013). Having originated in Jamaica, these informal systems can inform the creation of a context-specific justice programme that is intended to serve the Jamaican people. The consideration of Jamaican informal systems is essential since their benefits respond directly to the lack of access and context seen within the formal justice system.

Failures of the Informal System

Informal justice systems provide an alternative route to justice for those who are unable to attain it through the formal justice system. Unfortunately, there are aspects of these systems that are not consistent with the HR approach to punishment. I shall now discuss these issues, which include gender bias and corruption, inhumane treatment of participants as well as lack of or excessive use of enforcement. I propose that it is essential that, in developing an effective approach to justice in Jamaica, for the failures of its informal justice systems, which violate HR standards, must be reconciled to prevent the creation of a system that replicates these problems.

Jungle Justice System

In the case of the jungle justice systems, a number of issues arise from the interaction between the two systems. The jungle justice system seeks to limit state involvement in a number of ways, which limits access to justice for its residents. When the police are searching for a criminal,

the don will 'protect' him from the police (Blake, 2012). Instead of handing the wrongdoer over to the authorities, the wrongdoer is given a 'road sentence', which allows the wrongdoer to leave the community until the investigation of the crime is complete or until the person has served the equivalent of the expected sentence (Blake, 2012). This form of punishment is done to prevent intrusion from the state in general. Also, garrison residents are actively banned from accessing state justice. The don works to ensure that his leadership and administration of justice is not hampered by the state. As a result, dons expect complete loyalty from the community. I have discussed the fierce defence of dons who are under threat from the police and the state¹⁶⁹. In the garrisons, there is an understood 'code of silence' within garrisons where one is forbidden from reporting crimes to the police, the state or the media or becoming involved with the formal justice system altogether (Johnson & Soeters, 2008; Charles & Beckford, 2012; Sives, 2012; Blake, 2012). An individual can become an 'informer' by participating in the justice system; whether it is reporting for jury duty, being a witness in formal court proceedings or pressing charges. In fact it is perceived as one of the worst crimes within garrisons, which is often punished by execution. This 'informer culture' ensures that complete allegiance is held to the don¹⁷⁰. By limiting the interaction of community members with the state and forcing constituents to have unwavering loyalty to dons, jungle justice limits the agency of individuals to choose how they access justice.

There is some concern that legal pluralism can violate the rights of some groups in order to enable the freedom for other groups to have their own legal practices (Forsyth, 2007; Chopra &

¹⁶⁹ Many citizens within the garrisons are pleased that dons dispense punishment for a range of crimes that are neglected otherwise (Charles & Beckford, 2012; Johnson & Soeters, 2008). In a study by Jaffe (2012) about the privatization of security within garrisons, 36% of respondents believed that a strong don meant decreased crime for a garrison.

¹⁷⁰ Later on in the thesis, I argue that this 'informer culture' is an example of the many cultural nuances that should have been considered in the development of a context-specific national justice policy. In particular, it is important to consider how this informer culture would impact the ability to participate in a state-sanctioned system that seeks to address crime and how the incorporation of key figures from this system might have minimised this impact.

Isser, 2009; ICHRP, 2009; Picq, 2012; Mehmood & Chaudry, 2015). Informal systems often define an offence in keeping with the goals of the group or the overarching culture. These cultural norms sometimes carry their own discriminatory stereotypes, particularly towards women (Picq, 2012; Chopra & Isser, 2012). In addition, the men who dominate many of these informal justice systems typically do not place emphasis on the rights of women. Without female representation, informal systems uphold gender stereotypes that ignore and minimise the needs of women¹⁷¹. In Jamaica, the jungle justice system within garrisons is subject to bias. Dons are not subject to their own rules. This unwavering loyalty and limiting recourse has a particular effect on women's rights. Many dons have been known to take advantage of young women within garrisons (Amnesty International, 2006; Johnson & Soeters, 2008; Charles & Beckford, 2012; Blake 2013). Sometimes mothers who have received a favour from the don are ordered to send their daughters to the dons to be victimised sexually (Johnson & Soeters, 2008; Blake, 2013). Dons can commit these crimes because of the expected loyalty from the community members as a result of their economic dependence on the don. This renders the protection of women through jungle justice negligible.

The political allegiances of dons to one of the political parties create a bias in the administration of jungle justice. Within garrisons then, being associated with a rival political party is an offence that has consequences. Dons will engage in violence with political rival communities to ensure political victory for their party without a crime being committed. During election periods, just being associated with a rival political party can result in excommunication of one's entire family (Charles & Beckford, 2012; Blake, 2013). Also, the lack of mechanisms for controlling abuses of power has a direct effect on the HR of garrison residents. Within garrisons, it is

¹⁷¹ Many informal systems, particularly those that are created in opposition to the state, require the unconditional loyalty of its members, meaning that they can only access justice through the informal system (Franck, 2001; Wojkowska, 2006; Johnson & Soeters, 2008; Megret, 2013). Because many women access informal justice systems out of a lack of alternatives, they may feel pressured to accept the outcome of informal systems.

understood that certain illegal activities are allowed as they enable financial survival. Harriott (1997; 2002; 2003; 2009), Stone (1978; 1980) and Headley (2003) discuss the increasing tolerance of Jamaican citizens for organized crime as characteristic of the sub-culture of violence. They contend that there is an increasing normalisation and legitimization of violence within garrisons because of the dependency on crime for economic survival. As a result, community members justify and participate in their own exploitation for the greater good of the community and lack of recourse. Storeowners provide goods to dons and the gangs in exchange for protection (Jaffe, 2012; Sives, 2012). This is not considered extortion but a fair trade for freedom from theft or violence. Also, I have noted the use of severe punishment in the garrisons. This approach to punishment undermines the dignity of offenders, as underscored by the Standard Minimum Rules for the Treatment of Prisoners, the UDHR and ICCPR and CAT. In addition, there are no supervisory bodies to ensure that dons are making the right decision or that offenders are treated fairly.

Maroon Justice System

Like informal systems, the Maroon justice system has drawbacks regarding enforcement and lack of consensus between the informal and formal systems. There is no set code of punishment in place within the Maroon justice system, which might limit its capacity to address a wide range of crimes. In addition, as part of their non-punitive approach to crime, Maroons do not use incarceration, which would protect the community from violent offenders (Zips 1996; 1998; Besson, 1999). The right to impose capital punishment was taken away from the Maroons during colonial times, which worked to undercut their authority. In these cases, it might prove beneficial to defer to the state system through some collaborative efforts. However, Bilby (2006) notes that Maroons are increasingly taking their disputes to the formal justice system in Jamaica. While some judges do refer cases back to the authority of Maroon leaders, others accept the case, which also undermines the authority of the elders in the informal justice system. Without consensus of

approach across systems, the formal justice system will consistently undermine the authority of the informal system.

Forsyth (2007) proposes that an advantage of informal systems is based on the respect of elders and their capacity to enforce rules through community disapproval. This is not the case for the Maroons, who suffer from a lack of enforcement capabilities. The Maroons in Accompong do not have a police force to ensure that agreements are upheld (Zips, 1996; Zips, 1997; Baldwin-Jones, 2011; Friedman, 2016, accessed March 20, 2016).

Initially, this does not create a major issue since Maroons seemed to respect the leaders that had been appointed to restore social order¹⁷². Over time, many of the leaders have passed away or become too old to be considered sound. This consistent loss of the elders led to concerns about the impartiality of the Maroon Council of elders. In addition, there has been an infiltration of Western values and norms, which have disrupted the traditions of Maroon community members. As Western values began to dominate the Maroon community many persons began to question the efficacy of spiritual advisors responsible for the administration of justice¹⁷³. The de-legitimization of leaders meant that they were less capable of controlling the behaviour of the wider community. The council was no longer included in the justice process and the local traditions rooted in community, social harmony and discipline became antiquated ideals. This independence has weakened the

¹⁷² Anecdotal evidence indicates that Accompong did not have any major issues of course prior to the 1970s due to the respect that citizens had for their leaders (Zips, 1996, p296).

¹⁷³ The introduction of Christianity to the Maroon community in the 1930s compounded the growing concerns regarding the elders (Zips, 1996; Zips, 1997; Baldwin-Jones, 2011; Friedman, 2016 [accessed March 20, 2016](#)). During the leadership of Chief Cawley, he convinced the Maroon community that the council of elders was being manipulated by obeah for personal gain and that there should be a shift towards Christianity. After Chief Cawley burned down one of the spiritual huts without consequence from the First Time People, the doubts of Maroons were confirmed and obeah was outlawed (Zips, 1996; Zips, 1997; Baldwin-Jones, 2011; Friedman, 2016 [accessed March 20, 2016](#)). The council of elders was told to serve a Christian God.

administration of justice, as the Maroon system has not been given the enforcement capacity of the state, thereby highlighting the potential benefit of the support of informal systems by the state.

Thus, access to both systems can cause conflict because of their opposing guiding principles. Increasingly, Maroons are taking their cases to the formal Jamaican courts. The norm of communal land ownership is not considered and formal courts apply principles associated with individual land rights to their issues (Zips, 1996; Zips, 1997; Baldwin-Jones, 2011; Friedman, 2016 accessed March 20, 2016). In addition, as a system plagued by its own issues regarding access, it is of no real addition benefit to the Maroons. Just like other Jamaicans, maroons who have made claims regarding land issues in the formal courts are waiting for their cases to be heard (Zips, 1996; 1998). This problem highlights the need to consider cultural context. While access to both systems is important, it is essential that the formal justice system give deference to the cultural norms of Maroons, in order to avoid subverting its justice system.

Conclusion

Pluralism has the potential to foster dialogue in order to improve the overall approach to justice within any jurisdictions (Merry, 1988, Berman, 2009; Chopra & Isser, 2012; Quane, 2013). Constructive dialogue and collaboration between the state and actors of the informal systems might increase the potential for success of the implementation of an approach to justice. Members of the garrisons, particularly the defence crews mentioned in the Chapter 3, might have been useful allies in the development of a national justice programme. Their input and the visibility of their collaboration with the government might have helped to produce a more effective form of justice that would be received well by the inner-city communities. In addition, the Maroon justice system would have been a useful guide to implementing a culturally familiar and community driven justice approach that has been used by an indigenous group of Jamaicans.

I have assessed the formal and informal systems that operate in Jamaica within a normative HR framework. I have proposed that, in order to develop an effective approach to justice in Jamaica that supports the formal justice system, it is important to consider these indigenous systems. In particular, jungle justice and the maroon justice systems demonstrate that informal systems that are accessible, inclusive and contextual in nature are received positively. In addition, it is essential that any approach to justice being implemented must work in conjunction with the formal system to prevent the issues of bias, corruption and inhumane treatment experienced by users of both systems. The jungle justice and maroon justice systems demonstrate the problems that can arise when informal systems work against the formal system, whether it be increased violation of rights or lack of accountability for offenders due to lack of enforcement.

Chapter 6: Exploring RJ as an approach to crime in Jamaica

In the previous chapter, I established that a HR perspective on legal pluralism is an ideal guide for informal and formal legal systems to co-exist. More specifically, both systems should ground their practices to HR principles. In addition, this perspective proposes that informal systems should be community-driven, whilst receiving support from the state in the form of supervision and financial support. This approach overlaps significantly with the proposed collaborative governance approach.

The HR perspective on legal pluralism provides clear guidelines and objectives regarding the administration of justice through instruments such as the UDHR, ICCPR, CEDAW and Standard Minimum Rules for the Treatment of Prisoners. These documents state that both formal and informal systems should understand punishment as the protection of the wider public by holding to the wrongdoer to account in a way that returns the wrongdoer to society as a law-abiding citizen. In addition, it outlines key considerations for the administration of justice such as maintaining the dignity of all involved as well as increased involvement of the victim and community. The HR perspective provides guidance on developing a complementary, symbiotic relationship between formal and informal systems. The formal system should spearhead the administration of justice and act as a supervisory support for informal systems. Informal systems support the administration of justice by using culturally embedded norms and community involvement to resolve crime. This increased interaction and transparency between the two systems towards a shared goal of public protection is likely to result in increased access and overall efficiency of justice, thereby increasing public trust of the entire justice system.

I propose that RJ is an informal system that fits the HR perspective on legal pluralism. As discussed in Chapter 1, RJ seeks to uphold the human dignity of all participants by: (i) holding the

wrongdoer to account in a way that is humane and increases his capacity to be a law-abiding citizen (ii) considering the needs of the victim, and (iii) recognising the shared responsibility of crime prevention by increased community involvement (Braithwaite, 2002; Liebmann, 2010; Zehr, 2015). In this way, it is also collaborative as it encourages the direct involvement and considers the perspectives of all stakeholders in how the crime should be addressed. As a community-driven process, RJ is an adaptable process that is often shaped by the social, political and cultural context of the community, making it fit-for-purpose.

As noted earlier, I focus on the idea of RJ as a malleable approach to restoring agreement between persons or bounded communities. As highlighted by the discussion on informal justice systems in the previous chapters, I identify RJ as an informal justice approach, consistent with many informal justice systems, works to reconcile disputes within communities, independently of the justice system. However, I suggest that RJ might be best practiced with the support of the state, which can facilitate professional and financial resources as well as continue improvement via regular evaluation of practices. In addition, working alongside the state expands the reach of RJ to that of addressing crime once it has entered the justice process.

Using my own research as well as evidence from similar developing states, I describe an ideal form of *Jamaican* RJ; one that works alongside the formal justice system and inspires a shift in the way justice is administered in Jamaica as a whole. *Jamaican* RJ would seek to improve the justice system, in part, by responding to the intricacies of the Jamaican context including: (1) the lack of public trust in the formal system as compared with that of *dons*, (ii) the jungle justice system and its culture of informerphobia, as well as (iii) issues of professional and financial resource scarcity (iv) other culturally embedded practices such as the Maroon justice system and (v) political competitiveness between parties. I will then go on to contrast this ideal form of RJ with how RJ was actually developed and implemented by the Jamaican government.

Does RJ work?

Proponents of RJ characterise restorative practices as flexible processes, which can and should be adapted to the cultural context in which it is being implemented (Braithwaite, 2002; Liebmann, 2010; Zehr, 2015). RJ offers a range of benefits to the society such as increased satisfaction and safety of the public. Also, literature affirms that RJ can often have beneficial *byproducts*, including forgiveness, reconciliation and decreased recidivism (Braithwaite, 2002; Zehr, 2015)¹⁷⁴.

Retributive aspects of RJ

RJ is often viewed as the opposite of retribution (Llewellyn & Howse, 1997; Daly, 2002; Duff, 2003; Wenzel et al, 2008). Many proponents of the restorative approach consider it to be antithetical to a retributivist agenda (Holtermann, 2009; Strelan, Feather & McKee, 2011; Brooks, 2012; Niriella, 2013; Wenzel, Okimoto & Cameron, 2012; Daly, 2013). The position taken in this thesis, however, is that RJ can be a demanding penal regime and is consistent with moderate retributivism.

RJ is concerned with responding to harm in a way that is proportionate to the offence (Barton, 2000; Braithwaite, 2003; Duff, 2003; Wenzel et al. 2008). This is not necessarily inconsistent with retribution. Retributive justice is understood as an approach to justice that advocates the ‘unilateral imposition of punishment’ (Wenzel et al. 2008). According to retributive justice literature, this punishment must be proportionate to the crime, after considering harm and culpability (Ashworth, 2002; Morris, 2002; Von Hirsch, 2003). It is a common misconception that

¹⁷⁴ For instance, RJ can reduce reoffending through holding the offender accountable for his behaviour in a way that seeks to address certain risk factors such as alcohol and drug rehabilitation, anger management and community support, rather than imposing blanket curtailment of rights that are disconnected from the offending behaviour altogether. However these are not set objectives of RJ processes.

the state must impose harsh punishment, via lengthy periods of unpleasant incarceration out of some vindictive attempt to get back at the wrongdoer (Barton, 2000; Braithwaite, 2003; Duff, 2003). This line of thought misses the point that a penal regime can be demanding without being inhumane. While retributive justice requires the imposition of punishment that is proportionate to the offence (desert), it does not necessarily require long incarceration or the mistreatment of the wrongdoer (Barton, 2000; Braithwaite, 2003; Duff, 2003; Wenzel et al. 2008). On this point, retributive and RJ can be in agreement.

In order to communicate public condemnation of an offence to the wrongdoer and the wider public, there must be some burden that the wrongdoer shoulders as a result of committing an offence. Restorative responses fulfil these requirements by identifying the harm of the offence and developing a response that is tailored to repairing it (Barton, 2000; Duff, 2003; Wenzel et al. 2008). In this way, the restorative approach responds to the proportionality requirement of retributivism even better than formal justice system, which imposes pre-determined periods of incarceration and other conditions without significant consideration of circumstances surrounding the crime, the wishes of the victim and community or the best pathway reform of the wrongdoer (Llewellyn & Howse, 1997; Achilles & Zehr, 2000; Ashworth, 2002).

RJ also simulates in an interesting way the retributivist idea that it should be hard or difficult to undergo punishment (Zehr, 2015; Duff, 2003; Wenzel et al. 2008; Brooks, 2012). Impersonal retribution via incarceration can be undergone passively, and does not require active and public work from the wrongdoer to make amends or change his behaviour. It allows the wrongdoer to avoid discharging the duty to manage, learn and grow from their conflicts (Wenzel et al. 2008). Depending on the regime of the formal system, a wrongdoer can be incarcerated and returned to society without any change to his offending behaviour¹⁷⁵. In the traditional formal system, persons

¹⁷⁵ In the previous chapter, I discussed the lack of correlation between incarceration and recidivism.

who enter a guilty plea are given some form of reward for acknowledging their guilt, usually in the form of a reduced sentence. As a result many who are guilty of an offence are not necessarily incarcerated. On the other hand, RJ ensures accountability: the outcome of RJ practices always has an agreed action for the wrongdoer to undertake.

The 2009 UK National Commission on RJ discussed research on restorative practices that indicated that offenders found the process of facing their victim to be much more difficult and emotional than the traditional court process, which allows for passive acknowledgement of guilt. Choi & Severson (2009) look at responses to making or receiving apologies within a RJ setting. Qualitative data indicates that offenders found that preparing an apology statement was the one of the most difficult parts of the process (Choi & Severson, 2009). Also, at the outset of restorative proceedings, a wrongdoer must agree to abide by whatever outcome the restorative group decides collectively (Sapir, 2007; Van Ness, 2005). This may include activities that are more taxing than incarceration or incarceration itself. Agreements from RJ may include strict probation terms or participation in treatment programmes. In this way, participation in RJ will not allow the wrongdoer to avoid punishment

Restorative practices have a number of safeguards in place to ensure that offenders do not abuse the process. Proeve & Tudor (2010) discuss the problem of insincerity in restorative practices. While they agree sincerity is not guaranteed, they identify a number of ways that an insincere wrongdoer can be identified and the manipulation of the restorative process exposed (Proeve & Tudor, 2010). For instance, RJ can introduce expert community members who may be useful in identifying sincerity. In particular, Proeve & Tudor (2010) suggest the use of clinical psychologists and psychiatrists who have relevant training (Proeve & Tudor, 2010). Another method of identifying sincerity may be the use of polygraph testing. There is evidence to suggest that there is some benefit to using polygraph tests. For instance Grubin et. Al (2006) looked at the use of polygraph testing in

sex wrongdoer treatment programmes post-sentencing ¹⁷⁶. There were 176 sex offenders in treatment programmes in Atlanta, Georgia (3 of whom were women) with varied criminal backgrounds that took part in the study. These individuals were asked to report on their experiences with the polygraph. 85% of participants said that the polygraph was accurate (Grubin et al. 2006). Only 9 offenders admitted to making false disclosures. In addition, 56% of offenders said that the polygraph was beneficial to avoiding risk behaviours (Grubin et al. 2006). It is important to note that polygraphs were used post-admission of guilt. This is similar to how they would be used in restorative practices since offenders must admit guilt prior to participation. In this way, the polygraph is not used to determine guilt. Rather, polygraphs are used as an additional measure to ensure that offenders are sincere throughout the restorative process¹⁷⁷. While it may be hard to know for certain whether someone else is sincere, the preparation of individuals to identify common visible characteristics as well as the use of other avenues such as expert participants and polygraph testing may minimise the risk of individuals exploiting RJ.

There is no evidence that indicates that RJ has a negative impact on recidivism (Braithwaite, 2002; National Commission on RJ, 2008). On the other hand, there is a wealth of evidence that

¹⁷⁶ The use of polygraph testing is controversial (American Psychological Association, 2004; Lykken, 1991). Many researchers question its accuracy. Alternatively, because people respond to the pressure that the test puts them under, results may indicate guilt falsely.

¹⁷⁷ Although there is no literature indicating use of polygraph in restorative settings, they have been used in a number of other arenas to determine whether or not an offender is telling the truth. For instance, the Iowa Department of Correctional Services conducts polygraph examinations on sex offenders in treatment programmes. In this way authorities can establish the level of accountability they take for the crime and the level of compliance with treatment requirements (Iowa Board for the Treatment of Sex offenders, 2008). In 2011, Hertfordshire police began using polygraphs for sex offenders in court (BBC, 2011).

demonstrates a positive effect on crime reduction¹⁷⁸. The UK Justice Research Consortium looked at three RJ conferencing programmes in 2001. Of 374 cases, the Consortium found a 27% drop in re-offending in comparison with traditional court proceedings (RJ Council, 2011). A meta-analysis of 22 individual Canadian RJ programmes dating from 1985 to 2005 was carried out. It looked at studies that focused on offenders who participated in RJ programmes and examined recidivism, victim/wrongdoer satisfaction, and restitution compliance (Latimer et al. 2005). Latimer et al. (2005) found that restorative practices had a positive influence on reoffending rates. Latimer et al. (2005) looked at the influence of RJ on restitution compliance of offenders. Overall results indicated that young male offenders who participated in restorative programmes had higher compliance rates than those offenders who had prior arrangements (Latimer et al. 2005). 8 studies looked at restitution compliance specifically. The overall effect size was +0.33, indicating that those who participated in restorative programmes had higher compliance rates (Latimer et al. 2005). In addition, the overall effect size of the 32 tests that examined recidivism was +0.7 (Latimer et al. 2005). This means that offenders were significantly less likely to reoffend after RJ compared with traditional court proceedings (Latimer et al. 2005). Another study by the New Zealand MOJ (2011) looked at offenders who went through court-referred restorative programmes from 2008 to 2009. The study looked at recidivism rates for 12-24 months after offenders had been through restorative proceedings. In addition, researchers compared the recidivism rates with those of offenders who had gone through the traditional court system over a 3-year period. In total, the study looked at 10,369 offenders (New Zealand Ministry of Justice 2011). In 2008, of 251 offenders, restorative practice offenders reoffended less than other offenders by 28%. In 2009, of 468 offenders, restorative

¹⁷⁸ Generally, the literature indicates that there are a few indicators of when RJ will be most effective in reducing recidivism. For instance, recidivism is far lower in juvenile offenders who meet with their victims and comply with conference agreements (United, Nations, 2006). Also, research indicates that RJ works best when offender and victims are known to each other and reduces crime more effectively for more serious crimes than minor crimes (Strang & Sherman, 2007; National Commission on RJ, 2008).

practice offenders reoffended less than other offenders by 23% (New Zealand Ministry of Justice, 2010). In addition, only 13 out of 468 offenders (2.8%) who received a RJ conference in 2009 were convicted and imprisoned for offences committed within 12 months of the conference and only 4.7% conference offenders committed an offense that resulted in more than a 12 month sentence (New Zealand Ministry of Justice, 2010).

Benefits of RJ

Having discussed the capacity to reduce recidivism in offenders, I will now highlight the literature on victim satisfaction and community involvement.

The literature highlights that RJ provides a sense of satisfaction and validation to victims, particularly when compared with their dissatisfaction of the formal justice system (Shapland, 2007; Daly 2015; Johnson et al. 2015; Braithwaite, 2016; Ptacek, 2010). The UK Home Office carried out an assessment of 3 RJ programmes in the UK. All 425 victims were interviewed about the restorative experience (Shapland et al. 2007). These London-based programmes worked in conjunction with the criminal system (Shapland et al. 2007). CONNECT was such a programme that ran from 2001 to 2003. CONNECT offered a variety of restorative processes to parties who wished to participate in RJ. JRC was the second programme that offered restorative conferencing from 2001 to 2004 (Shapland et al, 2007). REMEDI was a programme run in Sheffield that ran from 2001 to 2003. Within this programme, a range of offenders was offered varied restorative programmes, although most engaged in some form of mediation (Shapland et al, 2007). Finally two random control groups (RCT) from Northumbria who went through the court system were interviewed. Conferencing was offered to offenders who had committed burglary or some sort of street crime (such as robbery). All except the control groups went on to participate in conferencing. All of the offenders in RCT had pleaded guilty to their crimes and were awaiting sentencing

(Shapland et al, 2007). Qualitative data collected from victims after the restorative conference demonstrated that 45% of victims believed in the sincerity of their offenders (Shapland et al, 2007). This was not related to whether the wrongdoer and the victim knew each other prior to the crime. In other words, this assumption of sincerity was not related significantly to any prior information the victim may have had about the wrongdoer's character (Shapland et al, 2007). In the JRC programmes, 91% of the victims said that they accepted the apology of their wrongdoer (Shapland et al, 2007). In addition, victims accepted apologies for a range of crimes, including more serious ones such as burglary and robbery (Shapland et al, 2007). Data from Sherman and Strang's Canberra experiments showed that only 12% of victims disagreed with using RJ as an alternative to the criminal justice system (Braithwaite, 2002). In addition, only 9% of victims left restorative proceedings wanting to hurt their offenders (Braithwaite, 2007).

In addition, emerging literature on RJ and sexual violence indicates the potential for it to reduce reoffending (Stewart, Sapers & Wilton, 2013; Koss, 2014; Kingi, 2014)¹⁷⁹. Skelton & Batley (2006) examined 63 conferences and 72 VOM cases that handled sexual violence between 2004-5. Interviews with staff indicated that all participants were satisfied. Koss looked at the RESTORE (Responsibility and Equity for Sexual Transgressions Offering a Restorative Experience) project¹⁸⁰. In 2010, Julich et al (2010) conducted a review of the RESTORE project. They conducted interviews with RESTORE facilitators and staff, as well as victims and offenders that had

¹⁷⁹ In particular, positive effects are seen when the following is in place; individualised screening and assessment of offenders use of experts (as suggested earlier by Proeve & Tudor), flexibility of time and responsiveness, a skilled facilitator, specialised treatment of offenders and physical and emotional safety of those involved (Daly, 2006; Julich et al, 2010; Koss, 2014 Bolitho, 2015). Post-prison programmes such as COSA have a strong evidence base (Skelton & Batley, 2006; Koss, 2008; Julich, 2010).

¹⁸⁰ The RESTORE Project aimed to use restorative practices for 1st time rape offenders with no previous records (Koss et al, 2004). Offenders who entered a guilty plea for misdemeanour sex crimes and were willing to enter the program were given a court order to do so. The victim of the offence also had to enter the program voluntarily (Koss et al, 2004).

undergone the process. In total 4 cases were made available to researchers¹⁸¹. Qualitative evidence received indicated that individuals felt that the programme was beneficial. Through the interviews, participants indicated that RJ allowed them to have closure, since they were given an opportunity to face their wrongdoer and tell their story (Julich et al, 2010). For those who did not wish to face their wrongdoer, RJ may still have been beneficial, since victims were allowed to use representation (Hudson, 1999)¹⁸². Participants of the RESTORE project also stated that they felt that the process was fair and objective (Julich et al, 2010). Regardless of the format, victims may benefit from the switch between the power role of the wrongdoer and victim. While the sex crime may have left the victim feeling powerless, restorative conferencing can allow the victim to feel empowered. Unlike the criminal system, which is concerned with arriving at a conviction, restorative processes seek to put an end to the abuse¹⁸³. This begins with a wrongdoer admitting his guilt (Van Wormer, 2009). Victims do not feel like they have to defend their accusation, since the guilt of the wrongdoer is no longer in question.

¹⁸¹ This yielded 18 participants (Julich et al, 2010). However, only 6 face-to face interviews were conducted (Julich et al, 2010). Due to the limited number of participants, researchers did not comment on the overall effectiveness.

¹⁸² Women's groups and other organizations that have a vested interest in responding to sexual violence will be able to provide insight into the victim's testimonial.

¹⁸³ Curtis-Fawley & Daly (2005) conducted a study examining the use of RJ to address gendered violence in Australia. They conducted interviews with: representatives from victim advocacy groups, Australian indigenous and non-indigenous women that were working in policy and government. In addition, archival research was conducted on 400 sexual assault cases handled by court and RJ. Finally they conducted a critical analysis of 15 sexual assault and domestic violence conferences (Curtis-Fawley, 2005). Many of the victim advocates interviewed saw RJ as a way or restoring balance to the victims. In particular, advocates indicated that victims get a sense of satisfaction by seeing the wrongdoer admit his actions and be held accountable (Curtis-Fawley, 2005). They also acknowledged the benefit gained by making offenders address their actions (Curtis-Fawley & Daly, 2005). Similarly in South Africa, Dissel & Ngubeni (as cited in Renzetti, Follingstad & Coker, 2017) examined the effects of conferencing on DV cases. Of the 21 women who participated, most women felt safe during the process and that they were provided with a space to speak freely and honestly. In addition, all of the women reported positive changes in their abuser's behaviour and a complete absence of physical abuse since the conference (18 months later) (Renzetti, Follingstad & Coker, 2017).

It is in the best interest of the public that offenders return to the community as law-abiding citizens¹⁸⁴. It is clear that the community also benefits from this reduced recidivism and increased safety within their communities. However, their direct involvement with resolving crime can also improve community cohesion. According to the thinking behind RJ, the wrongdoer, victim and micro-community immediately affected have a responsibility to work towards restoration of a norm that existed before the crime. (Mantle, Fox and Dhimi, 2005). Marshall (1999) states that community involvement encourages individuals to take an active role in restoring its society and preventing further crime. In particular, RJ works towards creating a community that supports the rehabilitation of both victims and offenders to prevent crime further. Throughout RJ practices, community members are present, in part, to provide support to both offenders and victims. Restorative practice can provide the community with a better understanding of crime, since they are able to hear the views of both the victim and wrongdoer. *The UN Handbook on RJ* notes that restorative practices such as peace commissions and victim wrongdoer mediation programmes can bring unity to the community by rebuilding the various broken relationships as a result of the crime, i.e., the relationship between the wrongdoer and his community (United Nations, 2006). Research indicates that volunteering has the capacity to build stronger social networks (Schmid, 2001; Gabbay & Guenther, 2005). Similarly Beck (2012) notes the positive effects that restorative practices can have on the community; namely increased community cohesion and engagement as well as community repair.

Will RJ work in Jamaica?

¹⁸⁴ Kurki (2003) noted that community benefits of RJ are under-examined. However, there are some studies that discuss this area. Sampson (1997) found that increased community interaction, sharing of norms and willingness to act on enforcing those norms is positively correlated with lower crime rates. In Vermont, over 78% of persons who participated in restorative boards recognised an increased sense of community cohesion (Karp & Clear, 2002).

RJ is an adaptable approach to justice; it can be moulded to meet the needs and context of any particular jurisdiction (Llewellyn, 1997; Llewellyn & Graham, 2008; Dundas, 2008; Zehr, 2015). There are a number of benefits to introducing RJ alongside a formal justice system. However, it is important to consider whether or not RJ is even suitable for a Jamaican context. As seen in other countries with similar issues, I propose that RJ can reconcile many of the previously mentioned issues faced by the Jamaican justice system, including lack of public trust, overcrowding and case backlog. In addition, consideration of the cultural, political and social context of Jamaican communities, give direct guidance as to how RJ should be practiced in Jamaica

One of the main justifications for implementing RJ in Jamaica is the need to improve the public trust of the justice system (MOJ, 2012). The National RJ policy identifies public trust as one of its primary policy goals and speaks to the lack of public trust as a result of the formal justice system to provide sufficient access to justice (MOJ, 2012). Increased satisfaction with RJ as a national programme, would help to improve the perception of the justice system as a whole. A recent report on the trust and confidence in criminal justice systems by Race on the Agenda (ROTA) noted that the use of RJ improved the perception of the justice system in South Africa (Rota, 2011). Similarly 80% of survivors and 90% of offenders that participated in the Gacca restorative courts in Rwanda indicated a developed trust in the justice system (National Unity and Reconciliation Commission, 2010). Thailand is a state that suffers from public mistrust of the justice system (Kittiyarak, 2004; Ramesh & Fritzen, 2009). Borinboonthana & Sangbuangamium, (2013) examined the use of restorative conferences and its effect on satisfaction rates and reoffending rates for offences including theft, fraud and assault. Of 11,962 cases, 92% of victims said that they were satisfied with the process and the outcome respectively (Borinboonthana & Sangbuangamium, 2013). 97.5% of offenders expressed satisfaction with the process and outcome as well. 95.7% of offenders felt that the conference held them accountable. In my own research, Damian

Hutchinson, head of PMI (PMI offices, 26/2/15), recounted a number of instances where utilising restorative-oriented practices contributed to the building of trust within hard-to-reach communities that suffered from gang violence. In particular he recounted a matter of reprisal violence between two gangs. He stated that by working with the gangs and the community, he was able to disrupt the violence that had occurred between a gang member and the family of the deceased. He added that RJ was essential to addressing these kinds of disputes due to its capacity to address the long-standing collective hurt and mistrust that remains after an offence has taken place and neglected by the formal justice system.

In order to build trust within the communities, RJ has to demonstrate that it can remedy practical issues that plague the formal justice system, such as case backlog and overcrowding. I have discussed these issues in previous chapters. Both Justice McIntosh (Puisne judge, DPP Offices, Kgn, 28/11/14) and Lisa Palmer-Hamilton (DPP, DPP Offices, Kgn, 25/02/15) noted in their interviews that (sexual) offences take up a lot of the court's time because of delays in getting victims and law enforcement to show up for court. In addition, victim-survivors from my focus group stated that they were less inclined to go to court following their victimization because their cases were consistently being put off; sometimes for more than a year. The literature highlights the potential of RJ to reduce the number of persons incarcerated through diversion from the courts and reduced recidivism even for developing states.

Braithwaite (2006) argues that RJ is an attractive option for developing countries because of its long-term cost-effectiveness, particularly if it is implemented as the first port of entry into the justice system. As discussed, Jamaica suffers from a lack of financial resources. As Brooks (2015) notes, these programmes and shorter prison sentences would be more cost-effective than long-term prison sentences with limited rehabilitation. Reports indicate that the implementation of RJ has led to substantial reduction of overcrowding, backlog and related costs in Nigeria, North Ireland, and

South Africa (Elechi, 1999; McGratton, 2010; Hargovan, 2012; Marshall, 1999; Furman, 2012; Strang et al, 2013; Sherman et al, 2014). Some of my interviewees such as Dorothy Lightbourne (Law Offices, Kgn, 20/02/15), as Attorney General and Barrett, the NTA of the national RJ programme (Skype, 10/01/15) highlighted the desire to reduce case backlog and overcrowding. Lightbourne (former politician, Law Offices, Kgn, 20/02/15) discussed a number of efforts to address this, including the partnership with DRF to handle mediation as well as the child diversion programme. Both interviewees affirmed that introducing RJ was an additional effort to reduce backlog. In Jamaica RJ could successfully divert juvenile and adult cases from the courts, once offenders have acknowledged harm caused, particularly for minor crimes and community disputes that can be referred to RJ at the pre-charge stage. Reducing overcrowding would help to improve prison conditions, for which Jamaica is consistently chastised by HR organisations¹⁸⁵. Having the capacity to reduce case backlog and overcrowding cost-effectively makes RJ an attractive approach for Jamaica, where addressing these issues is likely to bring about increased public trust in the justice system as a whole.

Collaborative Approach

If RJ would be effective in Jamaica, how should it be implemented? I propose that RJ should be developed in a collaborative manner so that it can respond to stakeholder-specific needs. Consistent with the literature, I have mentioned that the literature identifies RJ as a collaborative process (Llewelyn, 1997; Morris, 2002; Braithwaite, 2002; Earle, Crawford & Newburn, 2002; Bissessar, 2002; Lemley & Russell, 2002; Zehr, 2005; Hamlin & Hokamura, 2014; Silva, 2015). As

¹⁸⁵ Conditions such as overcrowding can be a hard form of treatment for an offender that affects the welfare of prisoners and their capacity to access adequate healthcare and other basic necessities.

The Universal Periodic Review has noted the problem of overcrowding in Jamaican prisons. In the most recent report from the Death Penalty Project in 2011, Robottom (2011) noted that overcrowding in prisons was so bad that hammocks had to be used in order to ensure that prisoners had a space to lie down at the same time.

a practice it involves the collective input of all stakeholders in determining how an offence is handled (Lemley & Russell, 2002; Hamlin & Hokamura, 2014). In addition, RJ requires the collaborative efforts of agencies to ensure that the RJ agreement is carried; ranging from CSOs and their role in victim/wrongdoer support, the use of counsellors and the supervision of the agreement by community members/ independent bodies. In India, social activists, retired judges and legal counsel as well as community elders contribute to the delivery of restorative practices, which are legally recognised to resolve a range of disputes (Latha & Thilagaraj, 2013). If RJ is a collaborative process, the design and implementation of it should also be collaborative. There is some literature to support that RJ programme development should reflect the process itself (Lemley, 2001; Braithwaite, 2002; Silva, 2015). By including key stakeholders, a fit-for-purpose version of RJ would be created, where its implementation would seek to address the Jamaican context, the needs of its communities and encourage participation through cultural familiarity¹⁸⁶. Collaboration between the state and stakeholders' to design a RJ programme should make stakeholders take ownership of RJ, thereby increasing use of the programme to resolve disputes. In my interviews with the Canadian consultants, Professor Llewellyn (consultant, Skype, 10/01/15) and Barrett (consultant, Skype, 10/01/15), they emphasised the idea of ownership. Whilst dismissing the one-size-fits-all approach to developing RJ, Llewellyn (consultant, Skype, 10/01/15) stated,

“And then they wind up disrupting the kinds of coalition building and the kinds of supportive relationships that you need to build and develop ownership over this kind of approach in institutions”

Both she and Barrett (consultant, Skype, 10/01/15) also noted that they initially declined the offer to lead the RJ policymaking process because they understood that it “if they didn’t develop their own national policy it wouldn’t work within the context” (Llewellyn interview, (consultant, Skype, 10/01/15). Barrett (consultant, Skype, 10/01/15) went further to say that her decision to

¹⁸⁶ As the research will demonstrate, the development and implementation of RJ was not collaborative, which led to the inappropriate policy transfer of RJ policy.

leave the programme was largely in the hope that it would become a ‘Jamaican initiative run by Jamaicans’. Damian Hutchinson (head of PMI, PMI offices, 26/2/15) stated that the community-driven, RJ-oriented approach embraced by PMI allowed communities to take ownership of the violence that was taking place in their communities as well as the need to address it. He noted that despite acting as facilitators, it was important that PMI allowed community members and the gangs to lead their own negotiations, so that everyone could be satisfied with the outcome. Giving stakeholders this sense of ownership also alleviates the contextual issue of informerphobia. Community members were less likely to feel that they were corroborating with the state, because they were in control of the process and outcome.

There are a number of groups that the state can collaborate with in order to develop a Jamaican version of RJ. I will now discuss how the collaboration with civil society and other non-state stakeholders can contribute to a more effective RJ programme.

Civil Society

The literature indicates the value of civil society in service delivery (Jones, 2010; Moloney, 2013; Macaulay, 2013). In chapter 1, I note that many states use non-governmental organisations to deliver RJ programmes or to provide additional support to RJ programmes for offenders and victims at various stages of the criminal justice process. In Paraguay, a French NGO, Terres des Hommes, is responsible for delivery of training and awareness programmes (Commission on Crime Prevention and Criminal Justice Twenty-sixth session Vienna, 2017). Collaborating with civil society is fitting for the Jamaican context, which has an increasingly strong civil society community that works on justice related issues. The state might have incorporated many of these organisations, such as Stand up for Jamaica and UNDP, into the delivery of restorative-oriented services, including post-RJ counselling, volunteer recruitment, offender reintegration and victim support. In the following

chapters, I focus on the failed collaboration between the Jamaican government, DRF and PMI. In this way, developing partnerships with local CSOs is a way of responding to the issue of financial and professional scarcity. It would reduce costs by allowing the national RJ programme to access existing infrastructure, trained facilitators and volunteers as well as a range of funding opportunities to help sustain the RJ programme.

Also, organisations such as PMI and DRF are trusted by the public and are welcomed into violent communities to resolve disputes. The Assessment of Community Security and Transformation Programmes in Jamaica highlighted the success of PMI in Jamaican communities. It recommended that PMI take on a leadership role in brokering peace in volatile communities and providing dons with alternative law-abiding lifestyles (Government of Jamaica, 2009). Citizens are more likely to trust the national RJ programme by seeing the state work alongside trusted CSOs. However, as will emerge, despite intentions of collaborating with these organisations, the neglect of political context, and in particular the competitiveness between political parties led to a breakdown in collaboration with civil society.

I have noted that there is a long-standing history of RJ in Jamaica, largely through the use community-driven processes by the DRF and PMI. Collaboration with organisations would enable the Jamaican government to tap into a pre-existing Jamaican RJ culture that was operating harmoniously alongside the Jamaican government. This is likely to strengthen the national programme by learning from the successes and failures of these organisations and utilising infrastructure and other tangible resources that the Jamaican community is already familiar with. In the following chapters I will highlight the failure of the Jamaican government to engage with these organisations in an effective manner.

Other non-state Actors

I have noted that there are two community-driven informal systems that are operating with some success in Jamaica already. I have discussed Forsyth's typology and the benefits derived from informal systems interacting with the state, including financial support, supervision and expanding pathways to justice. I propose that consultation with leaders of these systems in Jamaica, that is, dons and Maroon community leaders, would be beneficial to developing a Jamaican version of RJ that responds to the needs of the Jamaican community and is culturally relevant.

Working with non-state criminal actors in 'weak' states is discussed within the literature (Blake, 2013; The Stanley Foundation, 2015; Idler & Forest, 2015). For instance, the Venezuelan state engaged in what is referred to as 'complementary governance', where the state formed strategic alliances with non-state violent actors to share intelligence in 2011 and respond collectively to on-going justice issues. This partnership is based on the shared desire to reduce violence (though for different reasons). In particular, it notes the positive impact of collaborating with non-state criminal actors in justice policy development in terms of its capacity to improve the understanding of motives and justifications of criminal behaviour within a jurisdiction. Idler & Forest (2015) indicate that collaborating with these actors has policy implications, as it provides a better understanding of the complex relationships between these non-state actors and the communities they operate in. By involving these individuals and groups in the restorative process and having them gain a better understanding of crime, potential offenders may be less inclined to commit crime, which reduces the cost of crime prevention as well (Lilles, as cited in Morris & Maxwell, 2003).

By working with dons and gang members, there is an opportunity to provide them with a better sense of the need for human rights, thereby reducing the need for the jungle justice system altogether (The Stanley Foundation, 2015). I have discussed the efforts of the Jamaican government to remove dons from the garrisons. The Jamaica National Crime Victimization Survey (JNCVS)

reports a decline in the presence of corner crews, criminal gangs and area dons between 2013 and 2016 (Dalby 2009). Also, 42.7% of respondents still believed that area dons did positive things for their community (as compared with the 24.5% who believed them to be a negative influence). In Jamaica, there has been some discussion of incorporating violent non-state criminal actors. Levy (2012) discussed the potential of defence crews and former dons becoming part of the justice reform process. His research indicates that many of these individuals have a genuine wish to help dismantle the system that they previously supported. As respected leaders, this collaboration can provide the state with information about the needs of the communities they once served and increase the legitimacy of the state. The JJSTRF provided an overview of policy recommendations based on local research. One of the recommendations was the utilisation of reformed gang members in the fight against crime (Dalby, 2009). If the Jamaican government were to embrace the advice of international consultants, Levy (2012) and other local research (JJSTRF), engaging with former criminal leaders in designing a programme that their communities would want to participate in, one might see increased reception of the programme and a shift in public trust of the government. If former dons give some endorsement to state programmes in spite of the culture of informerphobia, garrison constituents might be more willing to follow suit¹⁸⁷. More recently the Jamaican government decided to incorporate more than 30 dons as stakeholders into the process of renovating downtown Kingston, which is intended to improve the economic status of Jamaica (Cross, 2017).

There are many partnerships between the state and informal traditional systems across jurisdictions (Wojkowska, 2006; Idler & Forest, 2015; Goff et. al., 2016). In Nigeria, there is a

¹⁸⁷ For instance, there is some collaboration with favela leaders in Brazil. As in the garrison system, the favelas have their own informal dispute resolution system, which is operated by criminal community leaders who are involved heavily in drug trafficking. In 2006, the Unidade de Policia Pacificadora was created to regain state control of the favelas. This project consulted directly with members of the favelas in order to find resolutions to drug-related crimes (<https://www.centreforpublicimpact.org/case-study/asserting-state-presence-in-rio-de-janeiro/>, accessed August 2013).

historical trend of the federal state consulting with traditional authorities to improve their relationship with communities and resolve minor disputes (Idler & Forest, 2015). In Tanzania, local neighbourhood watches collaborate with the state, through their supervision of police efforts, prosecution and courts (Wojkowska, 2006). Both Dundas (2007) and Llewellyn (2002; 2007) discussed the potential value of consulting with dons in their papers on RJ, which were commissioned by the Jamaican government. Llewellyn & Graham (2007) note the loyalty to dons within inner-city communities and states the dons' relevance to the reception of RJ as they are responsible for setting the 'moral tone' of the community. Llewellyn & Graham (2007) also affirm that this type of partnership has been successful in Jamaica before. Dundas (2007) states that dons might be encouraged to participate in RJ as a way of accessing a positive type of 'power and legitimacy'.

If RJ were to be collaborative and consider the perspectives of stakeholders and be sensitive to local needs, what would this Jamaican version of RJ look like in practice? During my interview with Michael Gordon (RJ facilitator and UWI lecturer, civil society Office, Kgn 27/11/14), he stated that it was too early to tell what a Jamaican form of RJ would look like. However, in exploring the views of Jamaicans on RJ and understanding the social, political and cultural context, there is some indication as to the types of things RJ might seek to incorporate in practice. I continue to draw on the long-standing history of informal community-driven justice systems in Jamaica in order to make RJ feel culturally familiar to Jamaicans.

I propose that some of the aspects of the Maroon culture, which are part of Jamaica's historical and cultural fabric, might have been incorporated into national RJ practices, thereby increasing the positive reception of RJ by Jamaicans. Dundas (2007) notes that the Maroon justice system as one that is consistent with the traditional values of Jamaican culture. In my interview with

Llewellyn (consultant, Skype, 10/02/15), she discussed these values as consistent with Jamaican culture,

“ You have a place where people feel deeply connected to seeing that justice is done is their business. It’s deeply embedded in the consciousness of the community. Its not something that people don’t care about.”

Its emphasis on community, concern about justice and its roots in African rituals and symbols is reflected within garrison communities and Jamaican popular culture. For instance, the Abeng¹⁸⁸ is an important symbol in the Maroon community and, a familiar one to Jamaicans. In embracing Jamaican context, the RJ programme could have used the Abeng as their ‘talking piece’ which is an object used to dictate whose turn it is to talk during restorative proceedings. Also, the RJ programme could have created a council of elders from the community¹⁸⁹ to the group of elders in the Maroon justice system that would consistently report on the needs of the community or provide insight on the public reception of the programme. They might be tasked with bringing forth practical concerns from the public that were highlighted in my questionnaire and focus groups, such as childcare and the impact of participation on employment and work collectively to reconcile them. Alternatively they could also become responsible for the monitoring of RJ agreements and providing support to an offender. This would replicate the community support of the Maroon community in resolving crime.

Furthermore, the circular set up of the Maroon court could have been mirrored in the RJ process. My interview with Hines (DRF director, DRF Offices, Kgn, 07/11/14) indicated that, despite the fact that there has been a focus on conferences, DRF facilitators have found that using

¹⁸⁸ An abeng is an animal horn or musical instrument originating from Ghana. The abeng is an important part of Maroon culture; it was often used as a means of communication between Maroons. Now it is a popular symbolic figure often used at ceremonial occasions within Maroon communities and across Jamaica.

¹⁸⁹ Some of these elders might include former dons as well as church leaders.

circles has better outcomes and utilise that format. PS Carol Palmer (MOJ Offices, 10/1/15) and Roydon Hall, interim director of RJ programme (RJu Unit, Kgn, 28/11/14) noted informal success of using circles. This could have been extended to the infrastructure of the RJ centres that were built. Therefore a Jamaican version of RJ would embrace a range of RJ approaches, including the use of circles and be aesthetically representative of Jamaican culture.

Also, if we consider the need to reduce crime, case backlog and overcrowding, it follows that RJ should be offered at all stages of the justice system. Some of the pioneering RJ jurisdictions, such as New Zealand, Canada and Australia work in conjunction with the state and its formal justice system (Morris & Maxwell, 1998; Gavrieldies, 2007; Barnes, 2013). In South Africa, criminal prosecutors are able to request a pre-trial diversion to RJ for both child and adult offenders (Skelton, 2013). In addition, family group conferences and VOM are listed as sentence options (Skelton, 2013). In Guatemala, VOM is recognised as a form of ADR by the courts. As discussed, allowing RJ at the pre-charge and pre-sentence phased has a positive effect on all of the aforementioned needs. In addition offering RJ at the post-sentence phase contributes to the reduced likelihood of recidivism of offenders.

Regardless of the model of interaction between state and RJ, it is essential that both the state and RJ programme have similar objectives. I have discussed the deterrence-based, wrongdoer-focused approach to punishment of the formal justice system in Jamaica. This approach, which is inconsistent with a 'restorative' and human rights understanding of punishment, is compounded by the various failures discussed in the previous chapters, such as court backlog, lack of resources and inhumane sentencing and prison conditions. Llewellyn (1997) and others propose that, when implementing RJ, it is done in a way that ensures a shift in the culture of justice within the state (Zehr, 2015). In particular, she notes that RJ cannot simply be an 'add-on' to the formal system.

Instead, the two systems should adjust to meet similar goals and understandings of accountability and restoration (Llewellyn, 1997). During my interview she noted (consultant, Skype, 10/02/15),

“I have some concerns and continue to have concerns if it (RJ) becomes a practice or a tool just used by the justice system or by certain actors in the system without any reflection or any fundamental questioning about how to think differently about how the justice system works”.

She went on to state that if we are implementing RJ, we need to consider how damaging the current system is to the work of RJ and how legislation and correctional facilities should change in order to contribute to holding offenders accountable in a way that encourages their return to society as law-abiding citizens¹⁹⁰. In countries that practice RJ in conjunction with the state, a shift can be seen in the formal justice systems. Many of these systems focus on returning offenders to the society through access to counselling, education, skill development and maintaining their civic responsibilities. In Africa, where RJ has also been implemented as part of larger justice reform efforts, there is also increased use of alternative sentencing. The African Prisons Project in South Africa has a number of projects that deal with a wrongdoer's reintegration to the community (African Prisons Project, 2012). The projects range from helping offenders finish educational programmes, training prisoners to become paralegals and provision of facilities for citizens' advice bureaux and legal resource centres (African Prisons Project, 2012). In Jamaica, the national RJ policy was being developed as part of a larger effort at justice reform. However, as I will discuss in the following chapters, it did not embrace the transformative spirit of RJ, highlighted by the simultaneous implementation of harsh legislation, its almost exclusive focus on infrastructural reform of the justice system and the failure to research rehabilitative-centred approaches to handling more serious crimes such as sexual offences.

¹⁹⁰ In the following chapters, the research indicates that RJ was actually being implemented as part of a larger justice reform effort. However, much of this effort was focused developing infrastructure, rather than creating a shift in the approach to justice.

Best Practice.

Despite the fact that RJ is a malleable process, there are certain approaches that have been seen as successful across certain and, in some cases, all jurisdictions. First, I propose that Jamaica would have benefitted from initial implementation of RJ for juvenile offenders. As noted earlier, a vast number of developed and developing states implement RJ programmes for juvenile offenders initially. This is particularly relevant to the Jamaican context, as restorative-oriented practices are already being used in schools. Rev. Dundas (2008), a former member of DRF and RJ facilitator provided a timeline of RJ in Jamaica. Within that timeline he noted the development of restorative-oriented programmes in Jamaican schools, such as Peace and Love in Schools (PALS) (1994), which continues to be successful currently. Implementing RJ for juvenile offenders would have strengthened the on-going restorative-oriented approach already taking place for young people, where it is seen as most effective across jurisdictions.

In addition to offering various forms of RJ at all ages, a Jamaican approach to RJ would seek to offer RJ at all stages of the criminal justice process. I have discussed the failure of the formal justice system to address sexual offences due to the expense of rape kit analysis. Many of the interviews that I conducted confirmed that there was a problem of backlog. In my interview with Lisa Palmer-Hamilton (Public Attorney, DPP Offices, Kgn, 25/2/15), she noted that within 3 months a total of 89 sexual offence cases were yet to be heard in court. Other members of the legal fraternity such as Attorney-at-law Dr Barnett, Q.C (Office, Kgn, 11/12/14) and Justice McIntosh, Puisne Judge (DPP Offices, 28/11/14), highlighted a number of reasons for the failure to address sexual offences, including lack of resources, absence of victims and witnesses as well as poor evidence collection and documentation by the police force. Proponents of RJ suggest that addressing these gaps in the formal system regarding access to justice might result in an improved

perception of the justice system by citizens (Llewellyn & Howse, 1997; Sherman, 2001; Braithwaite, 2003; Shapland, 2003; Braithwaite, 2007; Wallace, Wylie & Gordon, 2013).

Offering RJ at all stages of the justice process, particularly at the pre- charge, post-charge and pre-sentencing stage would address a number of issues such as overcrowding and case backlog in Jamaica. The application of RJ to a wide range of crimes, such as sexual offences would also further reconcile the issues of backlog and the overall failure of the Jamaican justice system to address a number of serious crimes. Certainly, many cases will still go through the court system. However, RJ punishes offenders who acknowledge their guilt, which will alleviate some of the burden on correctional facilities.

One might argue that certain crimes, including sexual offences require some period of incarceration as a means of ensuring public safety. In addition, there may be some hesitation for a state that embraces a more traditionally retributive approach to crime to utilise RJ for more serious crimes. Within my research, there was some indication of this hesitation. For instance, Justice McIntosh (Puisne Judge, DPP offices 28/11/14), head of FES Judith Wedderburn (FES offices, 10/10/14), PS Carol Palmer (MOJ Offices, 10/1/15), and former Attorney General, Dorothy Lightbourne (legal offices, 20/2/15) all indicated that RJ should initially address a limited number of offences in order to demonstrate its effectiveness to the public before broadening its application to a wider range of crimes. Similarly, my community focus groups shared concerns of safety when discussing the use of RJ for sex crimes. However, this concern might easily be resolved by offering RJ for more serious crimes at post-incarceration stage only. Offenders who acknowledge guilt might then be able to be sentenced through sentencing circles and access rehabilitation programmes, such as Circles of Support and Accountability, as part of the restorative agreement. In addition, Mr Hines (DRF director, DRF Offices, 7/11/14) noted the successful use of RJ for sexual offences by DRF without incarceration.

Given the failure of the formal justice system to address sexual offences, RJ might be a way of addressing offenders who acknowledge their harmful actions by providing support to them once they have served their time. Sex crime victims require moral justice (Koss et al, 2004). According to victims themselves, this can usually only be achieved when they feel that their input is valued and they are kept aware of the on-going process of deciding punishment. Responses suited to their emotional needs are also valued (Koss, 2004; Daly 2011; Edwards & Sharpe, 2004). Curtis-Fawley & Daly (2005) examined the use of RJ to address gendered violence in Australia. They conducted interviews with: representatives from victim advocacy groups, Australian indigenous and non-indigenous women that were working in policy and government. In addition, they conducted archival research on 400 sexual assault cases handled by court and RJ.

In my focus group with female victim-survivors, I found that most women value an opportunity to find out why the wrongdoer did it, particularly where the wrongdoer and the victim knew each other. The victim can articulate what her needs are and have them accounted for in the restorative agreement. By being offered at post-charge and pre-sentencing stage of trials, victim-survivors of crimes that the state has failed to address can gain a sense of validation from participating in the justice process, which is likely to improve their overall perception of it.

Generally, there is some evidence that RJ might be positively received into the Jamaican justice system. Taylor, Chauhan and Fondacaro (2012) looked at the perception of different approaches to crime in 107 university students in Jamaica. They gave participants scenarios where crime was addressed by incarceration only a mix of incarceration and RJ or RJ only. Researchers found that a mix of RJ and incarceration was most popular option for several crimes including rape and murder (Taylor, Chauhan & Fondacaro, 2012). Also, female victim-survivors from my focus group stated that they were unwilling participants of the court system because they felt that they were put on trial instead of the wrongdoer. Consistent with the literature on victim satisfaction in

RJ, many of the participants stated an interest in participating in RJ to address their victimisation. Results from the questionnaire indicated that more than half (148 of 202) of respondents would participate in a RJ process. In addition, it is important to note the long-standing success of DRF in Jamaica, who utilise RJ practices such as circles and conferences to handle both community disputes and court-ordered ADR.

Conclusion

In this chapter I have described an ideal form of RJ for the Jamaican context. I suggest that the understanding of RJ should be drawn from the work of Llewellyn (1997) and Zehr (2015), consistent with a human rights understanding of punishment. In order to achieve this, I propose that it be developed and implemented collaboratively with the state and other key stakeholders, particularly those who deliver restorative-oriented practices or participate in the operation of informal systems already. Collectively they should seek to transform the way in which justice is handled, given the need to improve public trust and the lack of professional and financial resources. In addition I propose that the national RJ programme should combine some best practice approaches, such as initial focus on juvenile offences, post-reintegration programmes such as COSA, with local practices from the informal justice systems operating in Jamaica already, such as the use of circles and elder councils.

In the following chapters, I will discuss the development and implementation of the national RJ policy by the Jamaican government between 2001 and 2015. As will emerge, the process was not collaborative as it limited the participation of or excluded key stakeholders altogether, such as the public, justice-focused CSOs and those persons who lead other informal community-driven informal systems within Jamaica already. As a result of this failed collaboration and a subsequent focus on donor interests, I argue that the Jamaican government had opportunistic motivations that

resulted in the inappropriate adoption of a RJ programme from a jurisdiction with little resemblance to the Jamaican context and was compounded by was divisive political tactics.

Chapter 7: RJ in Jamaica

In earlier chapters of this thesis, I have discussed information on the political, legal, social and economic context of the Jamaican society. I have argued that this context should be considered in developing justice reform policy. I have proposed that RJ, as a community-driven approach to crime that is bound by principles consistent with a HR approach to punishment, can be adapted to meet the needs of its jurisdiction, as long as it works under the supervision of the state. Before examining the policy itself, I will provide a chronology of RJ in Jamaica, from the initial introduction with RJ to its formal adoption by the Jamaican government by way of a national policy (See Appendix Five). This will be followed by the analysis of the research data.

History of RJ in Jamaica

The development and implementation of the national RJ policy took place as part of justice reform agenda set in 2001 (which I will describe shortly). However, RJ has a prehistory in Jamaica that existed previously through the work of academics and CSOs. Academics have recommended the exploration of RJ in Jamaica (Headley, 2002; Harriott, 2008; Llewellyn & Graham, 2008; Dundas, 2008; Williams, 2009; Taylor Chauhan & Fondacaro, 2012). Professor Bernard Headley writes about RJ as a viable approach to resolving crime in Jamaica. In *‘A Spade is still a Spade: Essays on Crime and the Politics of Jamaica’*, he suggests that restorative principles are essential to repairing the trust between the state and the Jamaican citizen as they can bring about increased accountability of the state and collaboration between community and state in crime prevention (Headley, 2002)¹⁹¹.

¹⁹¹ Many of his recommendations for community approaches to crime prevention were met with much hesitation from political officials, who remained loyal to the zero-tolerance approach. In particular, he relays a conversation that he had with Superintendent Adams, where he stated that Jamaica citizens were too uneducated to understand the concept of community policing and that they would manipulate the process to ‘pick off’ policemen (Headley, 2002).

DRF is the leading organization in ADR in Jamaica. The DRF website lists restorative practices as one of its services (<http://drfja.org/drf/>, accessed January 24, 2017). While interviewing its founding members, Donna Parchment-Brown (MOJ Offices, 30/2/15) and Paul Hines (DRF Offices, 07/11/15), I discovered that, in the late 1990s, they coordinated study tours to attend international conferences and training sessions given by Professor Howard Zehr at the Eastern Mennonite University (EMU) in the US. One of Professor Zehr's students, Barbara Toews (consultant, Skype, 06/11/14), confirmed that she went to Jamaica twice to provide training to DRF members, law enforcement and members of MOJ (under a PNP administration). Also, she stated that the DRF coordinated a summer study tour to EMU.

Donna Parchment-Brown ([JRIU Lead, MOJ Offices, 30/2/15) indicated that under her directorship of DRF, her recommendation to incorporate restorative practices into the justice system was not received positively. Rev. Leon Dundas (consultant, Cafe, Leicester, 20/4/15), who worked closely with DRF and MOJ, indicated that he was also unsuccessful in persuading the PNP-led government to implement RJ in prisons as part of a peace-making initiative in 2000. This failure to consider the advice of local RJ practitioners and academics is indicative of the lack of collaborative governance throughout the policymaking process and the dismissal of local context for the preferred acceptance of the donor states. The Jamaican government would later consider RJ as part of its justice reform efforts in the following year, which included the development of a national RJ policy.

RJ National Policy

According to Harriott, (2009), an integrated model should aim to transform communities that have high rates of violence by implementing social justice programmes that encourage development in addition to increasing state accountability and transparency. In 2001, the Jamaican

government stated justice sector reform as a priority¹⁹². This reform signalled a shift towards the use of social justice methods. Efforts were outlined to improve the efficiency of the justice system including modernisation, increased access to justice, legislative reform and development of inter-sectoral partnership, community involvement and offender rehabilitation (Jamaican Task Force, 2009). In 2002, PMI offered mediation, counselling and social development services (such as homework assistance and parenting advice). In 2006, the Community Security Initiative (CSI) was implemented (Government of Jamaica, 2009). This programme provided general public services and restorative-oriented programmes¹⁹³.

According to the *National RJ Policy* (MOJ, 2012), the decision to introduce RJ came within the same year that justice reform was prioritised. Specifically, the 2001 West Commission of Inquiry, which sought to address a shoot-out between the police and Tivoli residents, introduced expert testimony from Professor Jennifer Llewellyn from Dalhousie University in Canada in February 2002¹⁹⁴. She testified that RJ had the potential to address the prevalence of violent crime and rebuild public trust of the state. After this recommendation was made, a report of the *National Committee on Crime and Violence* spoke in favour of the capacity of RJ to address crimes committed by first time offenders and improve access to justice. During our interview, Professor Llewellyn (consultant, Skype, 10/01/15) indicated that, in 2002, upon request from MOJ, she published a research paper based on her Commission of Enquiry testimony. In this paper, she emphasised the potential application of RJ to youth crime, adult offences and inter-group conflict.

¹⁹² The main goals of the intended reform included strengthening the rule of law, crime reduction and improving public trust (Dalby, 2009).

¹⁹³ However, many of these programmes that have been implemented have not been assessed in terms of their effectiveness (Buckley, 2006).

¹⁹⁴ This was confirmed through interviews with the 2012-2016 Minister of Justice, Mark Golding, (MOJ offices, 11/18/14) current Permanent Secretary (PS) Carol Palmer (MOJ Offices, 10/1/15), former Director of RJU (2014-2016), Roydon Hall (RJU offices, Kgn, 28/11/14) and Donna Parchment-Brown (JRIU Lead, MOJ Offices, 30/2/15).

In addition, Llewellyn (consultant, Skype, 10/01/15) said it was essential to consider context-specific factors that might delay or reduce the uptake of RJ and its successful implementation, such as the mistrust of the police, the role of dons, resources, proportionality of restorative outcomes and public safety. Llewellyn (consultant, Skype, 10/01/15) recommended that, in order to address these contextual issues, Jamaican citizens should be the driving force of any RJ programme. This would increase the likelihood that their needs and circumstances would be considered; providing incentive to see a programme that they were involved in creating, succeed.

Still in 2002, a national election was held, after which P. J. Patterson and the PNP continued to lead the government. My interview with Professor Llewellyn (consultant, Skype, 10/02/15) revealed that, during this election, the PNP had made a promise to incorporate JPs into the RJ programme to garner political support. The National RJ policy states that RJ facilitators were chosen from a roster of pre-selected groups of individuals, including JPs. The CSJP Phase 3 Loan Proposal and the Overview of the Jamaican Justice System Reform by the JJSRTF (CSJP, 2014; Buckley, 2006) both state the government's intention to expand the role of JPs through the RJ programme.

This choice to include JPs was in response to a few issues. Donna Parchment-Brown (JRIU Lead, MOJ Offices, 30/2/15) noted in her interview that there are over 6000 JPs in Jamaica. Normally their responsibilities are limited to administrative activities, such as attestation of documents and serving in Petty sessions or Children's court. However, only 15-20% of JPs carry out the latter responsibility (JJSRTF, 2007). Expanding their role through the RJ programme was thought to alleviate some of the burden on the lower courts and the resident magistrates. This would increase access to justice with limited cost to the state, since JPs are not remunerated for their services¹⁹⁵ (JJSRTF, 2007). In addition, involving JPs in the RJ programme might have addressed

¹⁹⁵ Travel and lunch expenses are covered for the JPs (JJSRTF, 2007).

their need for greater respect from the legal fraternity. The Justice Reform report stated that JPs felt that they were not shown respect by lawyers and police officers (JJSRTF, 2007). The state might have attempted to appease JPs by increasing their remit to that of ADR. As intimated by Professor Llewellyn (consultant, Skype, 10/02/15), the PNP might have appealed to the JPs need for greater respect to gain their political support. The JLP also agreed to this inclusion within their policy manifestos (CaPri, 2007).

Acting on these recommendations, the Cabinet of Jamaica mandated MOJ to lead the development of a RJ policy in 2004. RJ fell under the remit of the CSJP¹⁹⁶, which had already secured grants and loans from the IDB and DFID (MOJ, 2012). CSJP is a crime and violence prevention programme that seeks to ‘enhance citizen security and justice in Jamaica’, particularly in vulnerable communities, through implementation of programmes that strengthen crime management capacity, improve the delivery of justice services and prevent crime and violence. Examples of programmes are entrepreneurship training, provision of victim support, and community dispute resolution (MOJ, 2012).

The main funders of CSJP were the IDB, DFID¹⁹⁷ and the Canadian Department for Foreign Affairs, Trade and Development. DFID required that their funding be used to address: (1) community mobilisation and governance, (2) Socio-Economic Opportunities, (3) Community Violence Prevention Services, and (4) Social Marketing and Public Information Campaigns (<http://www.csjp.gov.jm/>, accessed April 10, 2017). This funding sought to improve the justice system

¹⁹⁶ CSJP has 3 phases, which received various amounts of funding; Phase 1 ran from 2002-2009, Phase 2, from 2009-2015 and Phase 3, from 2015-2019.

¹⁹⁷ DFID has a history of working with developing countries in the implementation of citizen and security programmes as a means of addressing issues of police corruption and the IMF reform programme. The business case proposal for Phase 3 of the CSJP programme states that the use of citizen and security programmes is part of the approach employed in the UK, that targets people at risk of becoming involved with crime (DFID, 2014).

through such measures as developing an automated jury selection system and computerising the DPP office. DFID and the GOJ have a long-standing relationship, as DFID has funded many of the justice and security efforts by the Jamaican government (DFID, 2014). They are engaged in the implementation of citizen and security programmes throughout the Caribbean, as a means of supporting efforts at economic reform, as mandated by the WB and IMF (DFID, 2014). The business case proposal for Phase 3 of the CSJP programme states that the use of citizen and security programmes is part of the approach that targets people at risk of becoming involved with crime (DFID, 2014). Also, DFID viewed the CSJP programme as consistent with combatting gender-based violence (CSJP, 2011).

On the other hand, IDB provided a loan¹⁹⁸ for the CSJP programme. These funds came with general objectives: (1) Community Action and (2) Institutional Strengthening of the MNS (MNS). The CSJP Phase 3 loan proposal states its on-going role in lending to small and vulnerable countries. The CSJP Phase 2 Completion Report states that the inclusion of the Trafficking in Persons (TIP) programme in reform efforts aided the continued financial support of US bi-lateral funding, indicating that they also had interests in reducing issues that acutely affect women in Jamaica.

According to CSJP evaluation reports, the National RJ policy and the JVPPSD report, the RJ programme was mainly funded by the CIDA¹⁹⁹ and Department of Foreign Affairs and

¹⁹⁸ IDB charged a 5% fee of the total amount given to cover their overheads (IDB, 2015). This fee amounts to US\$ 1,755,145 approximately (CSJP, 2015).

¹⁹⁹ CIDA is an agency that provides sustainable development assistance in developing countries in order to reduce poverty (<http://www.international.gc.ca/>, accessed April 10, 2017).

Development (DFATD) (CSJP, 2011; MOJ, 2012)²⁰⁰. These organizations have provided on-going support for the Jamaican justice reform efforts, including the provision of 17.8 million to the JUST programme and 20 million and the provision of technical support to CSJP Phase 1 and the RJ programme (<http://jis.gov.jm/canada-commits-supporting-justice-reforms/>, accessed March 7, 2017; <http://moj.gov.jm/news/launch-just-programme>, accessed March 7, 2017)²⁰¹. The Canadian-Caribbean Cooperation Fund committed CAN\$500,000 Canadian to the RJ programme (<http://jis.gov.jm/canadian-funding-boosts-restorative-justice-programme/>, accessed April 13, 2017). The 2008-2009 MOJ Report stated that this funding went towards development of a RJ policy framework, the creation of training modules, training of RJ facilitators, building public awareness and hosting an international RJ conference.

The RJ programme received additional funding from various organizations such as the UNDP²⁰². Also, the RJ programme received some of their funds from the IDB loan for CSJP (<http://www.csjp.gov.jm/about/components>, accessed April 10, 2017). This funding went towards the delivery of training, development of the policy framework and building of RJ centres. Also, DFID provided some funding to strengthen the RJ programme during CSJP Phase 2. 12 million of the CSJP Phase 3 budget went towards increasing the range of RJ programme by focusing on an evaluation of services.

²⁰⁰ These organizations were supporting the Jamaican state financially in other justice reform initiatives already such as CSJP, PMI, and JVPPSD, Justice Undertakings for Social Transformation (JUST) and Citizen Security Initiative (CSI).

²⁰¹ CSJP Phase 1 completion report indicated that some of the funds for CSJP were allocated to addressing the damage caused by Hurricane Ivan in 2004 (CSJP, 2009). The re-allocation of funds might indicate the non-prescriptive nature of funding requirements.

²⁰² These funds did not go to the development of the programme itself. Rather they allowed the RJ programme to be useful in other areas. Rachel Morrison (HIV programme officer, UNDP offices, 21/12/14) indicated that UNDP gave financial support to the RJ unit to support victims from the 2001 shoot-out in Tivoli.

Some of the funders played an active role in the programme. The loan proposals for CSJP stated that IDB monitored the grants that were given to the Jamaican government for CSJP and the RJ programme. The National RJ policy stated that UNDP gave practical assistance in establishing the RJ unit. Also, many funder representatives from DFATD and IDB joined a range of other stakeholders on the steering committee, which served to inform policy and the CSJP programme in general (IDB, 2015). This committee incorporated stakeholders; from academics to practitioners, clergy, law enforcement and political officials. According to Dr. McCalpin, a committee member and professor (telephone, 3/3/15), the aim of the committee was to draft a policy document, and also to establish the value of RJ for Jamaican judicial system²⁰³.

The first major activity in the policymaking process was the hiring of consultants. The 2008 Annual MOJ Report indicates that, in 2003, funding enabled the hiring of staff and acquisition of facilitator trainers. Interviews with Professor Llewellyn (consultant, Skype, 10/01/15) and her former PhD student, Audrey Barrett, (who later became the NTA for the Jamaican programme, Skype, 10/1/15) confirmed that Llewellyn was asked to become the lead consultant for the RJ programme. However, she declined. Due to her emphasis on domesticating the policy, she felt that someone local, who had a better understanding of the Jamaican context, would be better for the position. In her interview she stated,

“In the conversations before the process, I had said that what I thought was really important, was that we would not write a policy for them, but that we would come, do interviews, learning and host some conversations amongst the parties on the ground. See what capacities there were. Certainly, help them understand what RJ policy would entail, where the strengths might be and how the policy is developed; but that if they didn’t develop their own national policy, it wouldn’t work within the context”.

²⁰³ The mandate of the committee overlaps with the role of Carey, who was also mandated to develop the policy. There is no indication of any collaboration between the committee, Barrett and Carey.

In 2005 and 2006, the PNP-headed government collaborated with DRF on a number of RJ initiatives. These efforts included an official launch of the RJ programme, study tours to Canada, public consultations, preparing RFPs for hiring, as well as a series of PR activities, including the creation of billboards and newspaper articles about MOJ efforts to introduce RJ. (http://www.cabinet.gov.jm/current_initiatives/jamaican_justice_system_reform_project accessed January 25, 2017). Donna Parchment-Brown (JRIU Lead, MOJ Offices, 30/2/15), Audrey Barrett (consultant, Skype 10/1/15) and the director of PMI, Damian Hutchinson (PMI Offices, Kgn, 26/2/15), made mention of study tours during their interviews. Barrett (Skype, 10/1/15) confirmed that DRF (headed by Donna Parchment-Brown at the time) coordinated the study tours that were made to Canada. Both Parchment-Brown (JRIU Lead, MOJ Offices, 30/2/15) and Hutchinson (PMI Director, PMI Offices, Kgn, 26/2/15) indicated that the Canadian study tour exposed them to various restorative practices and gave first-hand experience on how RJ was practiced in Canada. Parchment-Brown (politician, MOJ Offices, Kgn, 26/2/15) stated that the Jamaican government financed this study tour, which allowed representatives from DRF, PMI and a number of government officials to attend. Interviewees who participated in the study tours, such as Damian Hutchinson (head of PMI, PMI offices, 26/2/15), Parchment-Brown (JRIU Lead, MOJ Offices, 30/2/15) and Palmer (MOJ Offices, 10/1/15) all had positive reviews of the study tour and saw the potential of using RJ within a Jamaican context. Also, she noted that PS Palmer and others from this administration attended the Summer Training Institute at the IIRP in Bethlehem Pennsylvania, where Palmer would later become a board member. IIRP provides training for facilitators and implements restorative practices in schools.

Between 2005 and 2007, a number of changes took place within the internal leadership within the parties and the national leadership of the Jamaican government. In 2005, Edward Seaga, former head of the JLP and Prime Minister (1974-1980 & 1989-2005) stepped down as leader of the

party and internal elections appointed Bruce Golding as the JLP leader (Sullivan, 2010; Edie, 2011). In 2006, P.J Patterson, PNP Prime Minister stepped down (Sullivan, 2010; Edie, 2011). Another internal election saw Portia Simpson-Miller become the leader of PNP and Prime Minister. However, in 2007 a national election was held, which resulted in a win for the JLP and a change in national leadership from Simpson-Miller to Golding (Sullivan, 2010; Edie, 2011).

These developments resulted in a number of changes in key positions within MOJ. After JLP won in 2007, PS Carol Palmer left the Ministry in 2009. A JLP representative, Robert Rainford, replaced her. In addition, attorney-at-law, Dorothy Lightbourne (JLP) (2007-2011) became the Minister of Justice and Attorney General (<http://moj.gov.jm/past-ministers>, accessed January 25, 2017).

The JLP continued to develop the RJ project despite the fact that RJ is not consistent with the stated conservative ideology of the JLP. Despite this, the MOJ 2008-2009 Final Report identified the RJ programme as a priority for the JLP administration. It highlighted the RJ-related activities that had been completed, such as the exposure of 2000 persons to RJ and the hosting of an RJ conference. In addition, they stated plans to develop similar community justice initiatives such as the empowerment of emerging community leaders as a means of improving police-community relations (CaPri, 2007). However, this development of RJ is juxtaposed with the development of the 2009 SOA, which, as I discussed, inadequately defines sex offences and responds with blanket, long periods of incarceration without rehabilitation or individualised accountability.

Between 2007 and 2008 a number of important RJ activities took place. DRF was commissioned to carry out 23 public consultations and sensitisation and trained facilitators for the RJ programme. The public consultations were expected to gauge public opinion on RJ from a range of individuals such as children in schools, CSOs and law-enforcement agencies. The Appendix of

the national RJ policy includes a report on the public consultations conducted in 2008, which confirms the format for public consultations as Talking Circles. In addition they administered questionnaires to 923 of the participants from the consultations, to bolster their data.

During my interviews, I sought to find out what these consultations consisted of. All interviewees who coordinated or participated indicated that conversations took place in groups of about 50 persons in a circle²⁰⁴. Other aspects of their responses varied, indicating a lack of consistency across consultations. Both Dorothy Lightbourne (politician, offices, Kgn, 20/2/15) and PS Carol Palmer (MOJ Offices, 10/1/15) described the consultations as a ‘mixture of everything’, including video demonstrations and discussions regarding RJ in other jurisdictions. On the other hand, Donna Parchment-Brown (JRIU Lead, MOJ Offices, 30/2/15) highlighted the use of power points and role-play as significant to the consultations. She stated that the group discussions focused on flagging issues that the public found problematic within the justice system that RJ could potentially address.

The consultations indicated a lack of awareness of RJ. Of the 2,086 public consultation participants, 52.9% indicated that they did not know about RJ before participating (MOJ, 2012). When asked how one might become involved with RJ in Jamaica, the answers varied from ‘being a good role model’ to ‘youth groups with restorative principles’, indicating a limited understanding of RJ that focused on RJ as a moral approach to ‘healing the nation’, rather as a set of practices to address crime.

There were a number of issues with the public consultations. Audrey Barrett (consultant, Skype, 10/1/15), who was hired as the NTA in 2010, indicated a great level of disappointment with the way the public consultations were conducted. She described them as a ‘complete fail’, stating

²⁰⁴ None of the interviewees indicated the use of a questionnaire, despite the fact that it is referred to in the national policy.

that they were one of the aspects of the policymaking process that she would have redone. For instance, none of the questions posed sought to identify how Jamaicans wanted RJ to look like. After watching a 10-minute video on RJ, 4 main questions were asked: (i) what does justice mean to you? (ii) When someone is killed, raped or burglarised, what should be done and who should be involved? (iii) When a child is involved in trouble at school, who should be involved? (iv) How can you be involved in RJ? (MOJ, 2012). These questions did not ask how Jamaicans wanted RJ to be implemented in Jamaica. None of the reported responses – with the exception of finding out who might be involved-- indicated how RJ should be adapted to meet Jamaican context, with the exception of determining who might be involved. When asked who should be involved when burglary, murder or rape has taken place, respondents mentioned family, victim, community members, the police and trained mediators. However, there was no information garnered as to what RJ might look like in practice.

Also, the consultations did not include the RJ stakeholder groups, that is victims and offenders. The consultation report in the Policy indicates that the majority of the participants had limited interaction with the justice system. Of the 923 questionnaire respondents, 96.9% had never been found guilty of an offence and 70.7% did not know anyone who had been found guilty. Of all respondents only 21% had ever been victim to a crime. Therefore the views of victims and offenders were not represented²⁰⁵.

While the consultations provided information on RJ, they did not educate participants on the various ways in which these crimes are normally punished or indicate underlying causes of crime²⁰⁶. This meant that participants were answering questions from an uninformed perspective.

²⁰⁵ George (activist, Standup offices, Kgn, 20/1/15), from Standup Jamaica indicated that many of the offenders he worked with were interested in participating in RJ. Their input would have been useful in the development of the policy.

²⁰⁶ As mentioned previously, many offenders are victims of poverty, abuse and other issues that contribute to their offending behaviour.

For instance, many of my interviewees were misinformed about sex offences. Justice McIntosh (DPP Offices, Kgn, 28/11/14) indicated that sometimes women were complicit in their victimization because they led men on and said ‘no’, but meant ‘yes’. She also described offenders as predators who were unlikely to be rehabilitated. Minister Golding (MOJ Offices, Kgn, 18/11/14) admitted limited awareness of the various approaches to punishing sex offenders across jurisdictions, including the use of sex registers, which he spearheaded the implementation of, in Jamaica. Also he assumed that marital rape and homosexual incest did not take place in Jamaica²⁰⁷. The fact that these interviewees were involved with the development of the policy, consultations and sensitisation demonstrates that their efforts did not provide any information on offences to dispel these myths. Ultimately these misinformed ideas would not only have affected public opinion, but the ways in which stakeholders presented information on offenders²⁰⁸.

In 2007, PS Palmer (MOJ Offices, Kgn, 10/1/15) (prior to her temporary departure from government in 2009) became a member of the executive board of IIRP, who subsequently won the contract to train RJ facilitators. 2 more research papers were published that offered recommendations from consultants in 2007²⁰⁹. Llewellyn and her colleague, Danny Graham published a strategic framework for RJ in Jamaica; focusing on its implementation. It reiterated the

²⁰⁷ This is despite indication that marital rape and incest are particularly problematic forms of sexual offences across the Caribbean (Bourne et al, 2015). For instance, between 2007 and 2011, there were 584 cases of incest reported, relative to the 548 cases of rape to the Office of Children’s Registry in Jamaica (OCR, 2012).

²⁰⁸ As will be discussed, my focus groups provided some indication on the different approaches to punishment and factual information about offenders generally and sexual offences in particular in order to garner an informed opinion.

²⁰⁹ In 2007, some funding issues arose, which delayed the programme. The MOJ 2008 Annual Report states that MOJ requested a time extension to achieve the deliverables and submit the necessary documents to CSJP and funders. Confirmed by my observations at the 2015 International RJ Conference, the former Director of the RJ unit, Roydon Hall (RJU offices, 28/11/14) stated that the first director underspent and misused the funding. Also, the CSJP Phase 1 completion report and Rachel Morrison (UNDP HIV Programme manager, UNDP Offices, 21/12/14) indicated that some funding was reallocated to address the damage caused by Hurricane Dean (Lamas et al, 2009).

potential for RJ to be beneficial and in keeping with informal justice systems and its respected leaders. Her emphasis on innately ‘restorative’ factors was confirmed in her interview. She stated that Jamaica’s inner-city communities lend themselves to RJ because of the tendency for ‘everybody to be in everybody else’s business’ and the need to ensure that justice is done as ‘deeply embedded into the consciousness of the communities’. She intimated that considering the public mistrust of the state, partnering with dons and their gangs might improve the reception of the programme. Also, she emphasised collaboration with communities, civil society and churches, international agencies and academics. Finally, the paper provided a draft version of the national policy; of which a substantial portion has been incorporated verbatim into the executive summary of the National RJ policy.

The second paper by Rev. Dundas proposed that informal justice systems such as the jungle justice system and Maroon community justice were indications of the potential for RJ, as other effective community-based approaches to justice. He stated that jungle justice seen within the garrisons could be a ‘nascent expression of an outcry for RJ’²¹⁰, where the public turned to their communities for justice instead of the state, sometimes at great personal cost (Dundas, 2007). As a result, the role of dons should be incorporated into garnering support for the RJ programme because of the power they have over the communities. He noted that this type of collaboration has achieved success for CSOs that work to empower the communities (Dundas, 2007).

While PS Palmer (MOJ Offices, Kgn, 10/1/15) indicated that the PNP administration was opposed to working with the dons, the JLP considered the recommendations to explore local forms of community justice. Both Parchment-Brown (JRIU Lead, MOJ Offices, 30/2/15) and Lightbourne

²¹⁰ Dundas exemplifies how the punishments dispensed by the don might have a positive impact. A curfew imposed by the don, prevents someone being killed or arrested by the police. He discusses transforming this punishment into a way of ensuring that offenders are productive outside of work hours, as part of their restorative agreement (Dundas, 2007).

(former politician, Legal Offices, 20/2/15) discussed their plans to examine the local Maroon practice in Accompong Town. Lightbourne (former politician, legal offices, 20/2/15) had planned to communicate with the Maroon community through Donna Parchment-Brown²¹¹. Lightbourne (former politician, legal offices, 20/2/15) stated that she had signed documents that affirmed the exploration into the Maroon justice system and their consultation for the policymaking process. Parchment-Brown (JRIU Lead, MOJ Offices, 30/2/15) affirmed that Lightbourne had attempted to coordinate these efforts. Also the JVPPSD report stated that some preliminary reports were created on RJ and gender issues and recommends further investigation into using RJ for gender-based offences (Morgan, Leslie & Duncan, 2011). In her interview, Barrett (consultant, Skype, 10/01/15) stated that during her time as NTA, she recommended that research to see the impact that RJ might have on addressing sexual offences, given the ‘pervasiveness’ of sexual violence and the failure to address it through the formal court system. However there is no evidence to demonstrate that any further research was conducted.

The potential for collaboration, as seen between Parchment-Brown (PNP) and MOJ Lightbourne (JLP) was hampered by political competitiveness between parties. While Lightbourne (former politician, legal offices, 20/2/15) stated that both herself and Parchment-Brown shared a passion for seeing the RJ programme to fruition, their position within opposing parties meant that they were unable to carry out these plans because of difficulties experienced in attempting to work other PNP colleagues, particularly in light of the shift in power from PNP to JLP at the time. She indicated that there was a fight for ownership over the RJ policy, where the PNP sought to claim

²¹¹ Donna Parchment-Brown acted as the legal representative for the Maroons for cases addressed through the formal justice system.

ownership, despite the fact that both administrations had worked on its development²¹². In her interview, she stated that there was a purposeful delay in the publishing of the policy, so that PNP could take responsibility for the RJ programme.

Also, she noted a lack of organisational capacity in the JLP. Lightbourne (former political official, legal offices, 20/2/15) indicated that, despite a vested interest in RJ, the PNP had better relationships and connections with local and international organizations that would help to develop the programme. For instance, consultants Llewellyn (consultant, Skype, 10/01/15) and Barrett (consultant, Skype, 10/01/15) indicated that IIRP gained this contract due to their relationship with the PNP and PS Palmer specifically. The CaPri report (2007) notes that the PNP placed a greater emphasis on collaborating with international agencies than the JLP. Lightbourne (former political official, legal offices, 20/2/15) stated that this failure of the JLP to build connections with the international funding agencies affected the flow of funding during their administration. If the two parties had collaborated, they might have benefitted from each other's strengths; the JLP efforts might have resulted in a more contextualised policy, while the PNP's relationships with key stakeholders would have reconciled the issue of limited resources, and the need for increased overall organisation.

In 2009, IIRP began their training programme for facilitators. According to the CSJP Phase 2 report and the 2009 MOJ Annual Report, IIRP trained 59 facilitators, the majority of whom were

²¹² The struggle for policy ownership is seen in the case of the 2009 *SOA* as well. The 2009 *SOA* was passed under a JLP administration. During my interview with Dorothy Lightbourne, former Minister of Justice and National Security and Former Attorney-General, claimed ownership of the 2009 *SOA*. As soon as the PNP returned to power in 2011, the Minister of Justice, Hon. Mark Golding called for an early review of the legislation, claiming that it suffered from a number of issues that needed to be addressed urgently. During our interview, when I asked him about consideration of other approaches to punishing sex offenders, such as chemical castration and rehabilitation, he stated that JLP was in power at the time and was unsure of how much analysis went into the development of the legislation.

JPs (MOJ, 2009; CSJP, 2011). However, Barrett (consultant, Skype, 10/01/15) indicated that DRF did follow-up sessions after the initial training from IIRP.

As discussed, RJ is a malleable approach to justice that considers the social, political and economic context of the jurisdiction in which it is being practiced (Zehr, 2000; Llewellyn & Howse, 1997; Liebmann, 2010; Wright, 2000). My interviews with Llewellyn (consultant, Skype, 10/01/15) and Barrett (consultant, Skype, 10/01/15), and my own observations of IIRP Director, Ted Wachtel at the 2015 International RJ Conference, highlighted the distinction between the understanding of RJ held by IIRP and other stakeholders such as Professor Llewellyn and DRF. Consultants of the policymaking process and those who provided ad hoc training including Llewellyn (consultant, Skype, 10/1/15), Barrett (consultant, Skype, 10/1/15) and Barbara Toews,²¹³ (consultant, skype, 6/11/14), who conducted DRF training in the early 2000s) described their philosophy on RJ as a community-driven process, which adapts to the social, political and economic context.

On the other hand, IIRP takes a one-size-fits all approach to RJ. IIRP defines RJ as a specific practice with a set of defined protocols. It embraces the social discipline window (See Figure 7.1 below). The social discipline window is a model, which focuses on RJ as a leadership model for academic leaders and institutions, which are not necessarily applicable to the justice system (<http://www.iirp.edu/what-we-do/what-is-restorative-practices/defining-restorative>, accessed April 13, 2017). It views RJ practices as a part of a continuum.

Chart 7.0 IIRP RJ Continuums

²¹³ Professor Zehr from EMU provided training to DRF. Barbara Toews, a student of Zehr (Skype, 6/11/14), stated that their approach to training DRF was an inclusive one that focused on allowing participants to develop their own version of RJ, based on their context-specific needs. In particular, she stated that once the basics had been imparted, she would allow the discussion to be dominated by the participants, who would determine what they thought RJ should look like.

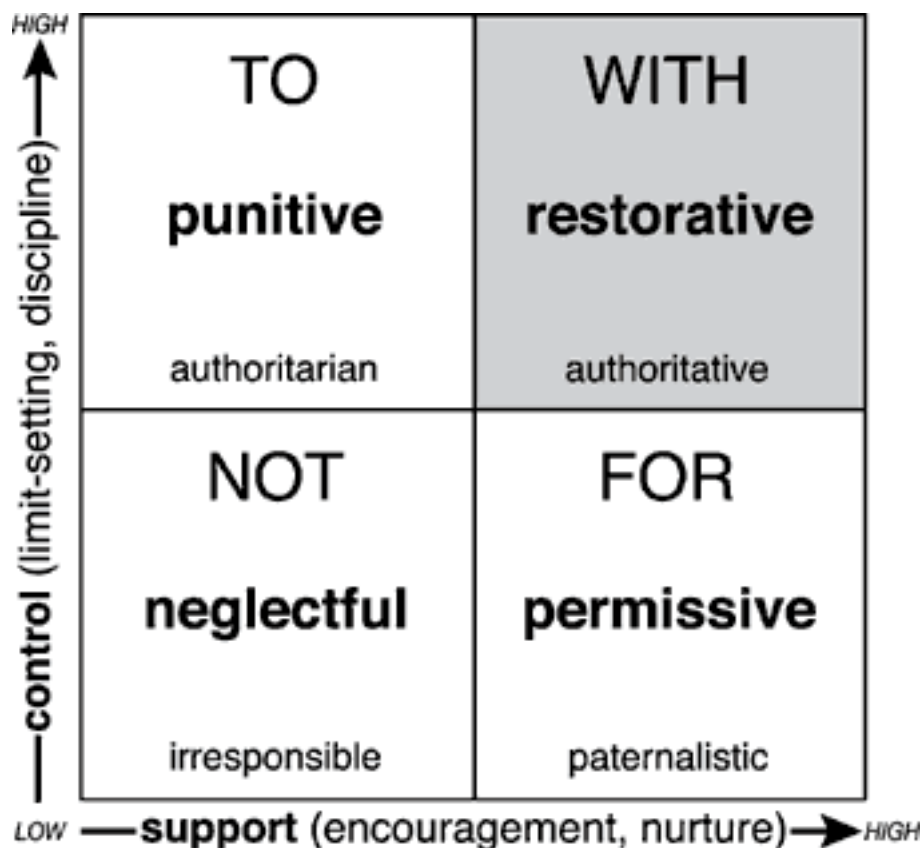


(<http://www.iirp.edu/what-we-do/what-is-restorative-practices/defining-restorative>, accessed April 13, 2017).

Throughout the continuum, they propose that using a set of scripted questions can be effective, regardless of context. On the informal end of the spectrum, IIRP identifies a series of affective statements to resolve conflict as well as scripted questions to be used for formal RJ conferences (<http://www.iirp.edu/who-we-are/about-the-iirp/about-us>, accessed April 13, 2017).

Wachtel reiterated this idea at the international conference; RJ could be applied in any context with the use of these scripted questions. He proposed that these questions, such as “Why did you do it?” and “How does that make you feel?” could be used verbatim to resolve any type of conflict regardless of situation, time or place.

Figure 7.1 Social Discipline Windows



(<http://www.iirp.edu/what-we-do/what-is-restorative-practices/defining-restorative>, accessed April 13, 2017)²¹⁴.

In her interview, Professor Llewellyn (consultant, skype, 10/2/15) noted that IIRP is an organization that believes that RJ can be applied in the same way regardless of context. She went on to say that they market and sell RJ as if it were a product, which is antithetical to her philosophy of RJ.

²¹⁴ As a theory, the social discipline window framework (as seen in Figure 7.1) focuses on maintaining discipline in social norms and behavioural boundaries (Weitekamp & Kerner, 2002; Wachtel, 2013). It proposes that social interaction can be managed by focusing on the interplay of continuums of ‘control’ and ‘support’. Although the social window framework argues for an inclusive approach to conflict resolution, these continuums posit RJ as opposite to punitive approaches to justice (Weitekamp & Kerner, 2002, p112; Wachtel, 2013). On one end of the spectrum, the approach that provides least support and control is considered punitive, while more control and support leads to a more restorative outcome (Wachtel, 1999). This is inconsistent with the Llewellyn’s understanding of RJ as retributive.

In addition to hiring IIRP, Ruth Carey, the former head of the RJ unit, was hired as a projects specialist by MOJ under the JLP administration. She was mandated to write the RJ policy, along with other policies. In 2009, the RJ programme was yet to hire a lead consultant. Both Professor Llewellyn (consultant, skype, 10/2/15) and Audrey Barrett (Consultant, skype, 10/1/15) stated that MOJ asked Professor Llewellyn to reconsider taking the role. MOJ indicated that they had been unable to find someone local who fulfilled the job description. However, she declined for personal reasons and recommended that MOJ hired Audrey Barrett, who accepted the role and began her work in 2010.

In 2010, Barrett arrived in Jamaica to begin her role as NTA of the RJ programme. In her interview, Barrett (consultant, skype, 10/1/15) indicated that she was given no specific mandate, but went on to initiate activities pertaining to the development of the 1st four RJ centres²¹⁵ and training modules, the coordination of training sessions by herself and IIRP, PR activities, overall organization of the programme and its volunteers and most importantly, development of the policy. Upon her recommendation, MOJ hired Carey as the new director of the RJ unit in 2011. She also stated that indicated that immersing Carey within the RJ unit would help her to write the policy, which they worked on together to complete.

As discussed, PNP had a strong partnership with DRF. It was intended that DRF would provide substantial support to the RJ programme. According to RJ director, Mr Hall (RJU offices, 28/11/14) and JRIU Lead, Parchment-Brown (JRIU Lead, MOJ Offices, 30/2/15), there was a MOU between the PNP administration and DRF that would allow the RJ programme to use DRF peace centres located throughout the island as sites for RJ conferences. Parchment-Brown (JRIU Lead, MOJ Offices, 30/2/15) indicated that after MOJ was given the responsibility of developing the

²¹⁵ All centres were built in one of 11 pilot communities, which were chosen based on the high rates of crime.

policy, there was a Memorandum of Understanding (MOU) with DRF to lead the development and implementation of the RJ policy. However, as an ally of PNP, JLP failed to capitalise on this resource. Individuals with a strong affiliation to the PNP have led DRF, including Donna Parchment-Brown. Parchment-Brown (JRIU Lead, MOJ Offices, 30/2/15) notes that, upon the departure of Carol Palmer, there was no effort by the incoming JLP PS Rainford to maintain this agreement. Professor Llewellyn (consultant, skype, 10/2/15) noted a fight for ownership between the JLP administration and DRF, as DRF expected to lead the development and implementation of RJ, while the government would be relegated to the role of providing financial support.

Barrett (consultant, skype 10/1/15) confirmed this by noting instances where attempts to collaborate with DRF were met with much hostility,

“There was always this underlying sense of rivalry.. I found whenever I engaged with DRF, it was either DRFs way of no way. I remember once specifically where I asked for clarification because there was a side conversation that was going on between someone from DRF and another person from that meeting. I asked if they could share the discussion. And the response from DRF was ‘don’t worry, just give it to us and we will do it.’”

As a result of the political competitiveness, the stated role of DRF in the National RJ Policy was limited to aiding the state in developing best practice standards for RJ in Jamaica (MOJ, 2012).

Between 2010 and 2011, a number of financial issues arose again that affected the completion timeline of the programme. The JVJPPSD report confirmed that the RJ programme was delayed because of issues with receiving the allocated funding from UNDP. The report states that these delays in 2010 were caused by a failure of some of the partners to fulfil the funding requirements of UNDP. The state and CSOs had some difficulty attaining funding due to their limited financial administrative capacity. Also, Barrett (consultant, skype, 10/1/15) noted that many of the state-allocated funds were reallocated due to IMF negotiations and the 2011 Commission of Enquiry investigating Dudus’ extradition.

Again, there were changes in political power. Following Dudus' extradition, former Prime Minister Golding and Lightbourne were questioned with regard to a number of activities during the extradition. Lightbourne was accused of exhibiting bias towards Dudus during the handling of the extradition request. In addition she was accused of giving false testimony during the enquiry. Lightbourne was removed from her position as Minister of Justice and Attorney General²¹⁶. JLP MP Delroy Chuck took over the role of Minister of Justice. Prime Minister Golding denied claims of the Jamaican government contracting an international law firm, Manatt, Phelps and Phillips to prevent the extradition of Dudus. Instead he suggested that this engagement with the law firm was carried out on behalf of the JLP. Despite his denial of these claims, he resigned and conceded to Andrew Holness, the current Prime Minister.

RJ director, Carey completed the formulation of the policy and was sent to Parliament to review. In her interview, Barrett (skype, 10/1/15) indicated that, as National Tech Advisor, her perspective and her familiarity with the Nova Scotia RJ policy influenced the Jamaican policy. With Carey not being well versed in RJ at the time, the failed consultations and limited search for RJ models, the policy bore much resemblance to the Nova Scotia model.

The National RJ Policy (MOJ, 2012) identifies its goals as '(i) creating a culture of peace through developing values of mutual respect (ii) empowering communities by allowing them to respond to crime (iii) reducing case backlog by diverting cases from the formal justice system (iv) increasing public confidence in the justice system (v) reducing recidivism by addressing the underlying causes of criminal behaviour and (vi) eliminating the reprisal culture of Jamaica by de-escalating community disputes'. Also, it provides a series of outlines including the protocols for participation, a governance structure, identification of key stakeholders, the legislative framework,

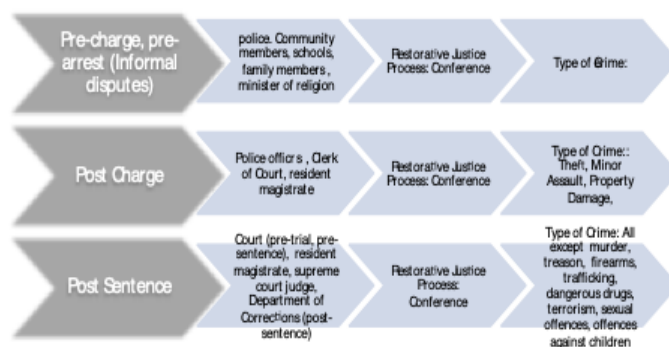
²¹⁶ Also, the role of MOJ and Attorney General were split into separate roles.

monitoring and evaluation activities, description of the training model for facilitators, as well as when RJ conferences should be used within the justice process.

The policy outlines the circumstances in which RJ will be used in Jamaica and for what crimes (See Chart 8.1).

Chart 8.1 MOJ RJ Referral Process

Ministry of Justice RJ Referral Process



- No formal referral process for offenders post-incarceration
- Informally pilot centres have used RJ for crimes including murder and sexual violence.
- The formal court referral process is not yet in place. Currently, pilot centres handle informal disputes only.

The policy document gives a list of the types of crime that restorative conferences can be used for. For pre-trial matters the list of offences include: (i) Unlawful wounding, (ii) Assaults, (iii) Property theft, (iv) Community noise, and (v) Property damage. For post-conviction cases all offences are included except: (i) Murder, (ii) Treason, (iii) Offences under section 3 of Malicious Injuries to property act, (iv) Firearm offences, (v) All offences under the offence against the person act (all related to murder), (vi) All offences under the dangerous drugs act (vii) All offences under

the child care and protection act, (viii) Terrorism, (ix) Perverting the course of justice, (x) Sexual offences, and (xi) All offences under the first schedule of the praedial larceny act.

Much of the policy is based on that of RJ in Nova Scotia, a provincial jurisdiction in Canada, where Llewellyn and Barrett are based. The Jamaican RJ policy identifies the Nova Scotia policy as one of the strongest models in the world (MOJ, 2012). I compared the national RJ policy published in Jamaica with the Nova Scotia policy. The structure and content of both documents are remarkably similar. The wording of the Eligibility Criteria checklist is verbatim to the Nova Scotia policy with the exception of the named agencies responsible for carrying out the assessment for eligibility (MOJ, 2012). Chapter 6 of the policy uses the same wording for discussing the range of RJ agreements, including supervision agreements (MOJ, 2012). Other sections of the policy mimic the Nova Scotia section explicitly, including the post-charge referral process, post-sentence referral and post-finding guilt referral process. Administrative techniques were transferred from the Nova Scotia policy; sections that copy the Nova Scotia policy refer to administrative procedures, such as the requirements for referral and how the agreements will be monitored;

The 2012 election saw the return of PNP to power. Following this shift, a number of personnel changes took place. Mark Golding (2012-2016) became the MOJ and PS Carol Palmer returned. The National RJ policy was published by the new PNP administration in 2012. However, Lightbourne (former politician, legal offices, 20/2/15) stated that the Cabinet had approved the policy in 2011, corresponding to her suggestion of an intentional delay of its publication so that the PNP could take ownership of the programme. Finally, Parchment-Brown left her role at DRF to head the JRIU in 2016.

In 2012, 7 additional RJ centres were built and sensitisation sessions continued. In 2014, Carey's contract ended. However instead of renewing her contract, Roydon Hall (RJ director, JRU

Offices, 28/11/14) indicated she left the RJ unit to start her own RJ consulting firm during our interview. I confirmed this through the website for the Centre for Social Transformation itself: <http://cstconsulting.org/> (accessed June 2018). Her departure was reportedly due to a failure to work alongside PNP counterparts. Professor Llewellyn (consultant, skype, 10/2/15) and Barrett (consultant, skype, 10/1/15) both discussed the unfriendly working relationships between the administration and supporters of the opposition party. Minister Golding (MOJ offices, 11/18/14) stated that PS Palmer (PNP) and the RJ director Carey (hired under JLP administration) had difficulties getting along. Barrett (consultant, Skype, 10/01/15) confirmed that, as a political entity, MOJ was a difficult space for Carey to work in effectively. Upon telling Barrett that Carey declined my interview, she (consultant, skype, 10/1/15) states,

“Ruth went through a lot at MOJ. Being a political entity, it had a lot of politics going on in it. I think it was then at the level of the PS that things would often go wrong”.

Upon Carey’s departure, Roydon Hall was given the role of interim RJ unit director. In the same year the RJ programme began to run RJ conferences on the basis of community referrals only at community centres.

In 2014, the national RJ programme began running conferences at the community dispute level. Although I did not observe a complete conference, my observations and my interviews gave me an understanding of what the conference process in Jamaica looks like currently. In particular, I visited 2 of the RJ centres; the Spanish Town Restorative Centre and the Tower Hill restorative centre in Olympic Gardens respectively. Both sites had issues that affected the capacity for persons to participate in RJ. For instance the Spanish Town Restorative Centre had no signage to indicate to direct persons towards the building. Upon my arrival there was no clear direction to the entrance, nor was anyone at the premises to provide any assistance. I was given an overview of the case itself, asked a number of questions ranging from my overall disposition on that day, my awareness of RJ

to my initial thoughts on how the case should be handled. I was given detailed information about the process that would take place, if it went forward to the conference stage. I was informed that on the day community members would be called into a room with the facilitator, while the offender and victim were kept in separate rooms. The facilitator would welcome us and provide us with instructions, such as the use of the talking piece (which was a tennis ball) and the need for confidentiality. The offender and victim would be brought in separately and introduced. The facilitator would then coordinate an opening apology and statement by the offender, which would be followed by a victim statement. The facilitator would then ask for input from all parties on the case and ways in which it could be resolved. Once all terms for the offender were agreed upon, the facilitator would then leave the room to write up the restorative agreement. During this time, participants were asked to fill out an exit survey. The facilitator would then return and ask offender and witnesses to sign the restorative agreement.

By 2015, PS Palmer (MOJ Offices, 10/1/15) and Donna Parchment-Brown (JRIU Lead, MOJ Offices, 30/2/15) indicated that approximately 80 cases had been conducted and 20 were complete. Implementation activities continued through to 2016, when, as the Policy states, over 5000 Jamaicans in the pilot communities identified were exposed to RJ. Over 40 more facilitators were trained. In 2015, the CSJP Phase 3 began. This phase gave significantly more attention to the RJ programme. Both the IDB and DFID CSJP Phase 3 loan proposals discuss plans to expand the RJ programme to allow eligible cases to get to a point of resolution within the pilot communities (DFID, 2014; IDB, 2014).

Official reports state that only 46 cases have been conducted. However, my interviews revealed that practices are not being carried out as stated within the policy. PS Palmer (MOJ Offices, 10/1/15) and RJU Acting Director, Roydon Hall (RJU Offices, 28/11/14) stated that RJ has been used informally to address more serious crimes such as rape, despite the fact that the policy

excludes them. Mr. Hall (RJ director, RJ Unit, 28/11/14) indicated that monitoring and analysis procedures might be flawed because of the failure to consider poor literacy rates within pilot communities. At the end of a restorative conference, participants are given a survey in order to determine their satisfaction level. Mr. Hall (RJ director, RJ Unit, 28/11/14) stated that there had been difficulty attaining accurate information since many participants were unable to read the questionnaire and instead, picked answers randomly. Thus measuring the success of the programme is inaccurate. Confidentiality is intended to be of utmost importance in any restorative process. However, during my visit to Tower Hill RJ Centre, I arrived to discover that my pre-meeting was to take place outside of the centre, due to the fact that a church event was occupying the premises, negating any sense of anonymity for those involved, including the facilitators. Other persons from the community were loitering outside the gate of the property, within earshot of the permeating, which might affect the confidentiality of the participants. Also, DRF continues to utilise restorative practices that are not approved by the national policy for crimes that are officially excluded from the list of eligible offences.

My observations indicated that there was limited emphasis on ensuring the success of the RJ programme. A series of PR activities took place during 2015. However these sessions did little to develop public awareness of RJ. Barrett (consultant, skype, 10/1/15) noted that both administrations carried out a lot of PR activities, as a way of showing the public that they were taking action. I attended the International RJ Conference and a RJ Library Exhibition that were held as part of International RJ week. Throughout all observations, there was consistent mention of expanding RJ to schools²¹⁷. However, there was no discussion of the success of the pilot on the justice system. The demonstrated lack of due diligence is consistent throughout my observations. The International

²¹⁷ Many of the plenary discussions focused on implementing RJ in schools. The keynote speaker, Wachtel acknowledged that his expertise was the implementation of RJ in schools and indicated that he had not visited to see the progression of RJ in ten years.

Conference had a series of plenary sessions as well as two main sessions, where Wachtel was the keynote speaker. Generally, the discussion was limited to the idea of RJ as a way of creating 'healing', but there was no discussion of what RJ looked like in practice or how it would achieve this healing in Jamaica. Wachtel was asked to speak on RJ and HR. As an expert on RJ in schools, Wachtel stated openly that this was something he knew nothing about or had given any thought to. Art submissions from primary students throughout the country focused on the 'spirit' of RJ and its ability to heal the communities, rather than educating people about RJ within Jamaica. At the conference, many of the panellists had limited previous interaction with the RJ programme and demonstrated little awareness of RJ and the status of the programme in Jamaica. Dr. Gerstenburg, the Senior HR Advisor for the UN, who was part of a panel discussion at the conference, acknowledged that she had little awareness of RJ. In fact, only 3 of the 8 speakers were described as being involved with the RJ movement in the conference brochure.

I attended another event: a library exhibition that was intended to launch RJ week, which sought to spread awareness throughout the younger Jamaica community. Students between the ages of 5 and 12 years attended this exhibition. However, the presentations made at the exhibition were not appropriate for the age range of the audience and nor did they refer specifically to RJ. The speeches from various members of parliament did not define RJ or discuss how it is used. Minister of Education (JLP), Ronald Thwaites' speech consisted of anecdotal stories of crimes, including gruesome details (someone's head being bashed in by their lover), which could have frightened the children present. During the exhibition children were questioned about RJ. The documentation provided was not created to serve its audience. At the library exhibition, some of the information describing RJ was pulled directly from the official statement of the policy without consideration that the audience consisted largely of children. There were no questions regarding access to RJ

services in Jamaica, details of the actual process or even how teachers and students in school might use it.

Also, the observations confirmed that the hiring of IIRP was ill advised. At the conference there was a VIP sensitisation session, where Wachtel made himself available to answer questions from a group of VIPs, which consisted of members of the judiciary, government, law enforcement, members of DRF and Canadian funders. However he was unable answer a number of fundamental questions about RJ, including questions regarding assessment criteria for effectiveness and how RJ would be practiced within a justice system.

Conclusion

In this chapter, I have provided a detailed account of RJ in Jamaica with particular emphasis on the development and implementation of the policy. Since I completed my research in 2015, the RJ programme has continued. A 2016 election saw the return of JLP to power²¹⁸. A new RJ director was hired. In 2016 the policy was enacted into legislation as the Law Reform (Restorative Justice) Act (2016). The most recent newspaper publications indicate that there have been over 200 RJ conferences, of which 189 have yielded agreements. There has also been some discussion of expanding RJ to schools. However, there is some indication that there continues to be a lack of collaboration in terms of implementation. For instance, DRF have publicised plans to introduce gender-based violence training, while the Law Reform Act does not permit RJ to be applied to any offences listed under the Sexual Offences Act (2009) (<https://jis.gov.jm/peace-and-justice-centres-to-offer-gender-based-violence-training/>, accessed January, 2019).

The following chapter will focus on the application of the Dolowitz & Marsh framework to this account of the policymaking process, which will highlight further the voluntary motivation for

²¹⁸ Carol Palmer has retained her position as Permanent Secretary.

policy transfer and the inappropriateness of its adoption from Nova Scotia, despite the lack of coercion from international stakeholders.

Chapter 8: Examining the Transfer of RJ Policy in Jamaica

In this chapter, I examine the efforts of the Jamaican government to create a national RJ policy. Despite being prompted by the agenda of developed states, namely Canada, a national RJ policy had the potential to reduce crime in Jamaica and subsequently improve public trust of the state. In this chapter, I will explain how this policymaking process became a failed opportunity for the Jamaican government. The Dolowitz & Marsh framework will help to explain how inappropriate policy transfer took place. Stemming from the *opportunistic* motivation for policy transfer and political competitiveness between political parties and their affiliated organisations, the Jamaican government failed to consider sufficiently the political, social and cultural differences between itself and the donor jurisdiction throughout the development and implementation of the national RJ policy, such as public mistrust of the state, lack of financial and professional resources and the presence of other local informal justice systems already operating in Jamaica. This failure to give sufficient weight to context is further demonstrated by the lack of collaborative governance.

Dolowitz & Marsh Policy Framework

Having given a narrative of RJ in Jamaica, I will now apply the Dolowitz and Marsh policy transfer framework to highlight a number of themes that are evident within the research. In particular, I establish that policy transfer took place; mainly from Nova Scotia and Philadelphia to Jamaica. However, the research demonstrates that the lack of collaborative governance throughout the policymaking process meant a failure to consider these contextual issues mentioned above. Thus, I argue that the national RJ policy stands as an example of inappropriate policy transfer; where there was a failure of the policymakers and other stakeholders to create a policy that considers the various economic, social, and political differences between Jamaica and the donor countries. The inappropriate use of policy transfer resulted in discrepancies between policy and

practice and poor implementation as a whole. The limited uptake and ill-considered implementation of RJ in Jamaica stands as a failed opportunity to implement an approach to crime that had the potential to address the Jamaican context without being under duress from international donors and precedent for its success.

I will now respond to the various questions as set out by the Dolowitz and Marsh Policy transfer Framework, which will highlight further how the research supports this position. I have established collaborative governance as a key process of policymaking. By making the policymaking inclusive, one considers the perspectives of all involved and how best to address them through a cohesive policy. Collaborative governance is an effective way of addressing potential pitfalls such as lack of professional or financial resources and public mistrust of the state. In the case of the national RJ policy, I argue that the failure to be collaborative contributed to the disconnect between the aims and implementation of the policy as well as the limited uptake of the RJ programme. Neither administration embraced their stated intentions of collaborative governance to policymaking. The Jamaican government collaborated with the donors, allowing them to influence key decisions, shape the policy and maintained consistent communication throughout the policymaking process. However, they often ignored the advice of international consultants who advocated for contextualisation, as it was not consistent with their motivation to give the appearance of implementing 'First World' programmes. Also the state excluded key stakeholders from decision-making processes and limited their involvement in the programme. I characterize the nature of the interaction between the state and civil society as one of *cooperation*, as their role was limited to service provision for specific tasks and their engagement was short-term and informal. In addition, the public was engaged in a *tokenistic* manner, as they were only informed and did not influence policy development. The state did not engage with other non-state stakeholders at all. As stated earlier, this failure to collaborate resulted in a lack of

consensus on the understanding of RJ and a disjointed approach to developing a policy that did not consider Jamaican context.

Who was involved?

Political officials from both administrations were involved directly in the policymaking process. Since there were changes to national leadership between 2001 and 2015, both the JLP and PNP influenced the national RJ policy. I have discussed the antagonistic relationship between political parties has affected the capacity for a unified approach to policymaking and collaboration. Dr McCalpin (telephone, 3/3/15), who sat on the RJ committee and Barrett, the NTA (Skype, 10/1/15), both confirmed that the differences in the policymaking approaches of political parties resulted in a lack of continuity throughout the policymaking process. Barrett (consultant, Skype, 10/1/15) and Professor Llewellyn (consultant, Skype, 10/2/15) stated that they observed JLP utilising a bottom-up, but disorganised approach to develop the RJ policy to create a contextualised policy. On the other hand, the PNP approach was top-down and structured, which aimed to develop a policy that was consistent with international practices. According to my interviews with Minister Golding (MOJ Offices, 11/18/14) and Parchment-Brown (JRIU Director, MOJ Offices, 3/2/15), PS Palmer spearheaded the MOJ's role in getting tasks accomplished and ran a tight ship in terms of supervising employees. However, Barrett (consultant, Skype, 10/1/15) indicated that the JLP Minister Rainford and the Permanent Secretary, who replaced PS Palmer during her absence, were far more laid-back in their approach. Former Minister Lightbourne (JLP) (legal offices, 20/2/15) also highlighted the failure of the JLP PS, stating, "He was a disaster, am so sorry, and he didn't

have a clue what he was doing and he messed up the whole thing”²¹⁹. Former director Roydon Hall (RJU Offices, 28/11/14) indicated that prior to the return of PNP to administration and Carey being hired, the RJ director under the JLP administration failed to spend the funding given, indicating a certain level of apathy towards implementation. This is consistent with the variation in motivation between the two parties. McCalpin (consultant, telephone, 3/3/15) stated that different administrations embraced RJ for different reasons. While the PNP focused on more practical uses of RJ, such as reducing backlog and recidivism, JLP viewed RJ as a way of re-envisioning justice towards a more community driven, contextualised approach to justice. This was highlighted during my interviews with PNP and JLP representatives. During my interview with Minister Golding (MOJ Offices, 11/18/2014) (PNP), he emphasised the capacity of RJ to divert cases from the formal justice system and quell violence in volatile communities. When I asked about the contextualisation of the policy, he noted that policymakers, ‘were quite firm about not departing too much from the established principles as to how it’s to work’. On the other hand, former MOJ Dorothy Lightbourne (legal offices, 20/2/15), (JLP) highlighted the JLPs focus on listening to the public through consultation and the public interest in becoming more invested in attaining justice. She states,

“we went to the public and found that they wanted justice and that the system as it stood was not giving them justice; that they did not have any input as to how the system worked..they are apathetic because they think it isn’t working for them, but when we listened to them, they would tell us what they would like to see. I don’t know how much of it was taken on board, but they had a lot to say”

I suggest that the fight for ownership and funding hampered the capacity for collaborative governance. I have discussed the fight for ownership of the RJ policy between political parties. As a

²¹⁹ Also, the multiple leadership changes at the level of national leadership, especially at the MP level also affected the capacity for collaboration. National Technical Advisor, Barrett (consultant, Skype, 10/01/15) indicated that during her time as a consultant, she served under 3 different MPs. Both Barrett and former RJ director, Hall (RJU Offices, 28/11/14) stated that these changes at the MP level affected the rollout of the programme as they constantly had to update new MPs on the status of the RJ programme and subject to any recommendations made by them.

result, both parties failed to benefit from each other's strengths and address their own weaknesses. For instance, the focus of the PNP was on operational success rather than contextualisation. The top-down approach of the PNP meant increased productivity with a focus of rolling out the programme quickly in a way that did not disrupt the function of the current justice system. Based on interviews and the timeline of events in conjunction with the reign of political parties the PNP administration was responsible for a number of operational achievements, including the tentative partnership with DRF, the attainment of funding, the coordination of study tours to Canada as well as the building of 7 RJ centres.

Initial JLP plans to investigate local forms of community justice and other contextual issues were discontinued by the PNP administration (2012-2016). In fact, they actively pushed against consideration of context. For instance, their close association with IIRP and their non-contextual application of RJ fits in with the top-down approach of the PNP, which also fails to incorporate the voice of stakeholders (which I will discuss shortly). There was neglect of the advice regarding the value of contextualisation by both Llewellyn and Barrett. PS Palmer (PNP) (MOJ Offices, 10/1/15) stated the refusal to collaborate with dons. Also, Lightbourne (former politician, legal offices, 20/2/15) spoke about the fight within the MOJ under PNP administration about the joint efforts of Parchment-Brown (JRIU) and Lightbourne to take the Maroons on board as official consultants for the RJ policy.

The RJ national policy might have been more effective in considering the Jamaican reality if it had partnered with the JLP and their bottom-up and contextualised approach. The JLP administration was responsible for initial investigation into the Maroon justice system and the hiring of Barrett, who proposed a more contextualised approach to developing RJ. As the policy was completed during a JLP administration, the RJ programme has some elements that consider the Jamaican context, including the facilitator-training module (which was developed by Barrett, who

placed much emphasis on contextualisation). As presented in the National Policy, the module has elements that consider how RJ should work within a Jamaican context, such as the section on ‘Orientation to the National Programme in Jamaica’.

However, the JLP administration was not proactive about the RJ programme. Barrett (consultant, Skype, 10/1/15) noted that the approach of JLP MOJ PS Rainford and the JLP as a whole was ‘not overly aggressive’ , ‘laid back’ and disorganised,

“What I found, upon my arrival, is that it wasn’t overly organized and wasn’t clear what the position was...as the national technical advisor, on one hand, had a whole lot of freedom, because the government didn’t have a clear vision, they just wanted it implemented”.

Also, the JLP suffered from a number of internal issues, which affected their organisational capacity and availability of strong leadership. Lightbourne (former politician, legal offices, 20/2/15) noted that her own party (JLP) suffered from not engaging in partnership with the PNP, as they had better contacts and better relationships with funders. She spoke about the PNP being granted extensions, the JLP were delayed in receiving money from funders. NTA, Barrett (consultant, skype, 10/1/15) affirmed that the shift from PNP to JLP resulted in a loss of the strong partnership developed between the international funders and the PNP.

While parties did not collaborate with each other, they collaborated with the international stakeholders. They had consistent communication, were involved in decision making, exchanged resources and an overlapping of boundaries between state and funders. The policy itself states that primacy was given to the developing partnerships with international stakeholders and ensuring that local RJ protocol would be consistent with international standards (MOJ, 2012). McCalpin (consultant, telephone, 3/3/15) affirmed that, when sitting on the committee, that the Canadian funders had influence on the policy through their financial and professional contributions. As a funder, IDB played an active role in policymaking by choosing monitoring the contributions of all funders. Also, UNDP coordinated efforts of victim support under the RJ programme and gave

practical assistance in developing the RJ unit. As a donor country, Canada was also directly involved. Both administrations supported the hiring of consultants from Canada, despite the fact that both consultants initially declined the offer, recommending that local persons should be hired²¹⁶. The steering committee had representatives from the IFIs as well. During my observation at the international RJ conference, I noted that a majority of those that were VIP invitees were international funders. At these sessions, they were able to answer questions about the status of the RJ programme in Jamaica that local stakeholders were unable to.

While there was emphasis given to donors, the state's relationship with the international consultants specifically, was that of coordination. They were asked to provide services and complete a range of tasks, which affected the outcome of policy transfer. As discussed, consultants were hired to guide the development of RJ programme through training, research papers and strategic planning (MOJ, 2012; MOJ 2009). As the NTA to the RJ programme, Barrett (consultant, skype, 10/1/15) lists a series of activities that she coordinated on behalf of the state, including the development of training modules and development of the policy. As a result, consultants have had some influence by being able to control the way in which they carried out these activities. Barrett (consultant, Skype, 10/01/15) acknowledges that her influence resulted in much of the policy resembling that of the Nova Scotia policy particularly and her influence in hiring Carey to write the policy.

However there is no indication that consultants were included in key decision making activities. The consultants were never asked to meet or work together for the sake of building a single consensus. None of the consultants were on the steering committee. Also, many of their recommendations were ignored, such as the incorporation of the dons into the RJ programme, the potential value of partnership with the Church and the prospective use of RJ for sexual offences in Jamaica. Also, Llewellyn's recommendations to hire a local consultant were ignored, as they asked

her to be a consultant twice. IIRP's role was limited to service provision as well, such as facilitator training and PR activities. At the international conference, Wachtel confirmed this by stating that he had not visited in ten years and was relatively unaware of the status of the RJ programme. The limited role of consultants and the lack of collaboration between them resulted in a lack of consensus of stakeholders throughout the RJ programme. For instance, Barrett, IIRP and DRF, which have varied understandings of RJ, trained multiple cohorts of practitioners. Training from IIRP would have focused on implementing a one-size-fits-all best practice, while Barrett and DRF emphasised an approach that considered each case individually and local context. The fact that IIRP, Barrett and DRF trained RJ facilitators means that RJ facilitators will have varied understandings of RJ and its purpose for Jamaica. Naturally the inconsistency training would be reflected in the delivery of RJ conferences and, subsequently the satisfaction levels of participants.

The state also limited its interaction with the public to that of informing them about the RJ programme. However, this effort was not carried out efficiently. Interviews and the policy itself highlighted the failure of state to collaborate with the public. McCalpin (consultant, telephone, 3/3/15) noted that one of the main failures of the policy was that it did not domesticate best practices by incorporating public opinion. He noted that, despite it being a mandate of the steering committee, there was never any discussion of how RJ should be implemented to consider local context²²⁰, such as proximity between victims and offenders within communities or the popularity of reprisal crime as part of the informerphobia culture. These issues within politically affiliated communities were important considerations for the RJ programme, as persons might not be willing to participate in RJ if not protected from possible vigilante attacks. In this way, the failure to incorporate the public might have affected the uptake of the programme. The policy includes a copy of the consultation process, which focused on providing information about RJ, rather than garnering

²²⁰ This committee was the only form of participation for academics and CSOs.

public opinion on the kinds of context-specific issues that the RJ programme should have considered. As part of the consultation, questionnaires were handed out to participants. However, the questionnaires assumed that citizens had a solid understanding of the justice system. It did not provide factual information on the nature of offending or the justice system.

As discussed, the consultations did not include groups who were likely to participate in RJ, such as victims and offenders. The consultations with different potential stakeholders demonstrate the varied considerations and recommendations that might have been garnered. For instance, my female-victim survivor focus group highlighted the interest of victims of sexual violence to participate in RJ and some of the considerations that would need to be reconciled. Most of the women said they would utilise RJ, but offered a number of criteria that would make them feel comfortable, including the presence of a psychologist, physical space between themselves and the wrongdoer, as well as anonymity of identity and location of the RJ conference. Having this information might have encouraged collaboration with civil society and other non-state stakeholders. For instance, by partnering with DRF, the Jamaican government would have had access to their peace centres, which were already trusted public spaces. This would have negated the need for building or occupying spaces that were identified for the state RJ programme specifically.

Former RJ director, Hall (RJu Offices, 28/11/14) indicated that the presence of psychologists had not been considered by MOJ. However, collaborating with CSOs and universities, such as NCU might have allowed cost-effective access to counsellors that were familiar with ADR. In addition, despite the fact that the victim-survivor group highlighted the value of researchers to observe conferences, so that the programme could consistently be improved upon, PS Palmer (MOJ Offices, 10/1/15) and Hall (RJu Director, RJu Offices, 28/11/14) both confirmed that this was not allowed under the RJ policy.

On the other hand, the community focus group emphasised the consideration of current legislation and implications for the misuse of RJ for revenge. Persons suggested that the RJ programme should consider the availability of legal counsel to ensure that RJ did not violate the rights of offenders or are too lenient on them. Also, they asked questions based on practicality such as how participation might affect job security and childcare. Had the Jamaican government asked these questions, they might have considered collaboration with the NMLS, where law students might have provided legal advice in return for course credit. Also, partnerships could have been developed with schools and corporate organisations (such as Digicel Foundation) that provide childcare to assist participants where needed.

Similar to the Jamaican government, I used questionnaires to confirm the local understanding of and response to RJ²²¹. The responses to the questionnaires distributed by the government highlighted a hesitation to apply RJ for more serious crimes and confirmed the popularity of the harsh punishment, such as beatings and incarceration. However my questionnaires focused on informing the public with factual information and identifying the reasons for hesitation to participate and the kinds of measures that might encourage it. Many persons identified fear as the main reason for non-participation, confirming the need for a Jamaican restorative process to address the issue of informerphobia. The participation-encouraging measures were similar to those of the focus groups, including arranging for a psychologist, law enforcement, legal counsel and the anonymity of participants.

I have noted briefly the missed opportunities for the state to collaborate with civil society. Where there was interaction, the involvement of civil society was limited to that of cooperation.

²²¹ The Jamaican government did not maximize this approach, despite its capacity to garner a large number of responses with limited expenditure. They collected 923 responses from within the same group of participants from the Talking Circles.

Their interaction was task-oriented and intermittent. For instance, PS Palmer (MOJ Offices, 10/1/15) noted that organisations such as HEART²²² and UNDP as instrumental in providing support to the RJ programme. The national RJ policy includes a general note that identifies CSOs as an important stakeholder within the implementation process in terms of service delivery and making a connection with the public (MOJ, 2012). However, no specific CSOs were identified as having a specific role. DRF was limited to that of facilitator training and conducting public consultations, alongside Barrett and IIRP. McCalpin (consultant, telephone, 3/3/15) notes the presence of civil society representatives from DRF and PMI on the steering committee. McCalpin (consultant, telephone, 3/3/15) noted that his own organization, Truth and Action Justice Group, carried out sensitisation sessions surrounding reconciliation and healing. However McCalpin's group was not identified as a stakeholder in the policy.

The political competitiveness also affected the limited relationship with civil society. The departure of (PNP) PS Palmer under the JLP administration resulted in a failure to maintain a partnership with DRF. In this policymaking process, DRF maintained its allegiance to PNP, which hampered the capacity of the JLP administration to develop the RJ programme, as evidenced by the difficulty that Barrett faced working with DRF under a JLP administration and their failure to maintain MOUs regarding its partnership. Former RJ director Hall (RJu Offices, 28/11/14) stated that PS Palmer's replacement, (JLP) PS Rainford did not adhere to the MOU that was in place to use DRF centres for RJ services, which would have been a cost-effective and familiar space for participants to experience RJ, thereby improving the uptake of the programme. If the PNP and JLP

²²² The Human Employment and Resource Training Trust (HEART) is a training and resource development organisation that provides technical and vocational education across Jamaica (<https://www1.heart-nta.org/About1>, accessed September 2018).

had collaborated, the JLP would not have suffered from this loss of network²²³. Admittedly a lack of professional and financial resources might have hampered the collaboration between state and CSOs. However, the proliferation of self-reliant organisations such as DRF, JFJ and Standup for Jamaica, meant that, as discussed, CSOs were already providing services that might have been incorporated into a contextual RJ programme, such as counselling, training and rehabilitation.

However, the JVPPSD report (2008) states that CSJP not only failed to partner with local NGOs for the consistent delivery of services, but also engaged minimally with other state-run agencies with similar mandates, such as PMI (GOJ, 2012). For instance, despite its long-standing use of RJ in Jamaica, DRF is not named as a referral agency for the national RJ programme. During my interviews with Hines (DRF Director, DRF Offices, 7/11/14) and Hutchinson (PMI Director, PMI Offices, 26/2/15), they demonstrated little awareness of the status of the national RJ programme, stating that most of the information was filtered through Parchment-Brown, as a former director of both organisations. Also, Minister Golding (MOJ Offices, 11/18/14) acknowledged a failure to partner with DRF effectively, citing a lack of capacity as justification. However, as discussed the Jamaican government had already contracted them to handle all mediation on behalf of the formal justice system, whilst running their own independent ADR services across the country. All other CSO representatives that I interviewed said that they were not asked to participate in the policymaking process.

²²³ Minister Golding (MOJ Offices, 18/11/14) intimated that one of the reasons that DRF was not given the responsibility of developing the RJ programme was a lack of capacity. Similarly, the civil society leaders whom I interviewed such as director of AWOJA, Hermoine McKenzie (AWOJA Offices, 16/2/15), the coordinator of Stand-up for Jamaica, Carla Gulotta (Standup for Jamaica offices, 20/1/15) and Director of the FES, Judith Wedderburn (FES Offices, 10/10/14) indicated that one of the main issues that civil society suffers from is a lack of professional and financial resources. Thus the dependence on the IFIs for funding prevented the creation of partnerships with civil society.

Finally, there was no engagement with non-state criminal stakeholders at all. As stated earlier, Canadian, local consultants and the public suggested an examination into informal justice systems in Jamaica and more specifically, the incorporation of dons as consistent with the contextual approach of RJ. Despite this, PS Palmer (MOJ Offices, 10/1/15) indicated the state's opposition to incorporating these suggestions. In addition, plans to consult with Maroons regarding their justice system were discontinued by the PNP government. Instead they developed partnerships with international organisations such as UNDP, CSJP and IIRP to carry out service provision. Consistent with the literature and RJ programme research papers, the incorporation of dons would have allowed the state to understand why the public trusted the jungle justice system. Having dons, who are trusted by garrison constituents, co-sign the RJ programme might have encouraged increased participation from its citizens. This would be an important step in improving the administration of justice in Jamaica. If the efforts of the JLP to investigate the maroon justice system had been actualised, the state would have benefitted from the insight into an informal justice system, similar to RJ that was also consistent with the Jamaican culture.

What is the motivation for policy transfer?

As discussed, stakeholders have varied and multiple motivations for engaging in policy transfer. I will now discuss these various motivations of the aforementioned stakeholders. In keeping with the *Dolowitz and Marsh Policy Transfer Framework Continuum* (Figure 1.2), I suggest that political officials engaged in opportunistic transfer for the national RJ policy, as they are motivated without coercion by a desire to attain funding from donors in order to claim party-political ownership of the policy and give the appearance of addressing crime in Jamaica. This is a departure from the history of semi-coercive policy transfer seen in Jamaican policymaking.

The decision to reform the justice system in Jamaica was prompted by international disapproval of the justice sector and in particular its inadequate response to crime that affects developed states such as the transnational drug trade (Levy, 2009; Harriott, 2009; Dalby, 2009; Golding, 2012; Barrows, 2014; Silva, 2015). Also, the Jamaican government sought to respond to the shift in global governance towards developing best practice standards such as community justice and gender equality (Fruhling, Tulchin & Golding, 2003; Stone, 2004; Jones & Schoburgh, 2004; Dalby, 2009; Levy, 2009; Monahagn, 2015)²²⁴.

The Jamaican government was keen to maintain existing partnerships with countries and financial institutions by aligning their justice reform efforts in a way that is consistent with their interests. As a practice, RJ is in keeping with international trends in justice reform and the stated mandates of the donor countries funders as evidenced by the recommendation of RJ made by Llewellyn at the 2001 Commission of Enquiry. The research demonstrates the opportunistic nature of policy transfer. As stated by Parchment-Brown, as the CEO of DRF (MOJ Offices, 3/2/15), her suggestion to the Jamaican government to introduce a national RJ programme was not well received. It was not until the Canadian expert witnesses suggested RJ as a potential avenue to reduce crime that the Jamaican government considered its adoption. Following this suggestion, the Jamaican government limited their study tours to Canada and the United States in an effort to secure funding from them. Also, the policy mentions Canada as a pioneering force in using RJ effectively 11 times, more than any other jurisdiction mentioned. As stated, the government sought Canadian

²²⁴ Monahagn (2015) discusses the impact of global governance meetings as a site for policy transfer of justice policy. He discusses the G8 meetings, which are a tool for the Global North to place pressure on the South to implement policies that are in line with their own interests (Monahagn, 2015). In the case of Jamaica, the motivation for reform was prompted by the 2000 Millennium Summit, which encouraged partnership between developing and developed countries to 'create an environment at national and global levels alike- which is conducive to the development and elimination of poverty' (<http://www.un.org/millenniumgoals/pdf/mdg2005progresschart.pdf>, accessed October 16, 2016).

consultants, despite their advice to hire someone local and kept Canadian funders involved throughout the policymaking process. I noted the awareness of the RJ programme demonstrated by Canadian representatives at the PR activities I attended. Also, two individuals represented CIDA on the steering committee. Lightbourne (former politician, legal offices, 20/2/15) stated that PS Palmer would also go to great lengths to have an international component at RJ events. Professor Llewellyn (consultant, skype, 10/2/15) also discussed the fact that IIRP put PS Palmer on their board, in order to bolster their chances of becoming the official trainers for the national RJ programme.

The opportunistic nature of the policy transfer is highlighted further by the lack of sincere motivation of both political parties to maintain RJ as a priority. Lightbourne (former politician, legal offices/ 20/2/15) stated that, during her time at MOJ, she certainly felt that while the government was focused on reducing backlog, the communities were seeking an overall shift in the administration of justice. During our discussions, both Barrett (consultant, skype, 10/1/15) and Lightbourne (former politician, legal offices, 20/2/15) noted that during their time at MOJ, a lot of money was spent on PR. She stated that the government was eager to let the public know that they were attacking crime. However, neither of the parties indicated the prioritization of RJ in their official documentation. The CaPri report (2007), which provides an analysis of the various aspects of the political parties' manifestos prior to the 2007 election, states that the PNP's manifesto was vague in its discussion on justice. RJ was mentioned briefly in PNP 2007 Manifesto (4 times), as part of efforts to increase community justice programmes (PNP, 2007, CaPri, 2007; ECLAC, 2008). While they mention the issues that need to be addressed, such as backlog, they do not state RJ as a response to these issues definitively (CaPri, 2007).

The JLP does mention RJ more than the JLP. The JLP manifesto discusses responses to backlog in greater detail, including increasing the powers of JPs through ADR (CaPri, 2007). However, subsequent JLP documents, such as the 2010 Jamaica Security Report only mentions RJ

once. Also, the 2008-2009 MOJ Final Report noted that, under the JLP administration, many activities under the RJ programme including increasing the number of referred mediation cases to DRF²²⁵, planning of the International RJ conference and completion of the policy were not completed. This signals the superficial interest that both parties had in RJ, juxtaposed with the choices made to please international stakeholders. The insincere motivation is consistent with the literature on policymaking in Jamaica where political parties will embrace a policy, but neglect it once the financial backing is given (Harriott 2009; Tennant & Clayton, 2010; Daley, 2013). During my interview with Barrett (consultant, skype, 10/1/15) , she stated,

“I kind of chuckled when you said that the legislation was forthcoming, because they used to put PSAs about the policy and how it was forthcoming and it took years and years”. This statement highlights the lack of priority given to moving the policy process forward by the Jamaican government”.

Moreover, there is no indication that the donors exerted any pressure to adopt RJ. In fact, the Canadian stakeholders emphasised the need to develop a contextual version of RJ for Jamaica. As noted earlier, both Barrett (consultant, skype, 10/1/15) and Llewellyn (consultant, skype, 10/2/15) , as international consultants to the RJ programme were adamant that Jamaicans owned RJ. Also, Minister Golding (MOJ Offices, 18/11/14) noted that it was, under IDB requirements that a local person was hired to run the Granville RJ centre²²⁶.

As discussed, much of the funding that was used towards the RJ programme came from funding for general justice reform efforts. As Barrett (consultant, skype, 10/1/15) stated, ‘where there was a need, the funding would follow’. I noted earlier that the Commission of Enquiry and provision of victim support from the Tivoli incursion usurped some of the funds intended for the RJ

²²⁵ In 2007, 967 cases were referred to DRF for mediation, while 74 cases were referred in 2008 (MOJ, 2009).

²²⁶ Despite this hiring requirement and the even more specific request that the person hired by from Granville, the Jamaican government hired someone local from outside the community. As a result the community rejected this person and they had to be relocated to another centre. This highlights the value of public opinion and collaboration.

programme. In their interviews, Donna Parchment-Brown (JRIU Lead, MOJ Offices, 30/2/15) and Rev Dundas (consultant, Leicester cafe, 20/4/15) stated that much of the funding that RJ received came through money from other programmes such as CSJP. This indicates the relatively lax restrictions placed on the Jamaican government by funders in terms of how the money was spent. Despite the lack of coercion, the Jamaican government was persistent in applying a ‘best practice, one-size fits all’ version of RJ in Jamaica. The hiring of IIRP is consistent with this agenda. The fact that the Jamaican government utilised an organisation that advocates ‘universal application of RJ without consideration of context’, against the advice of consultants highlights their intent to be seen favourably within an international context, as opposed to effecting change within the Jamaican community.

Where is the policy transferred from?

In the case of the national RJ policy, the state engaged in exogenous transfer. The research demonstrates that Jamaica went to great lengths to adopt the use of RJ from Canada. They avoided the more cost-effective context-specific examination of local forms of community justice such as jungle justice and the Maroon justice system in developing the national RJ policy. In addition to the study tours and the hiring of Canadian consultants, much of the funding of the RJ programme came from Canadian agencies, such as CIDA and the CCF. As will be discussed in the following section, much of the policy has been taken from the RJ policy of Nova Scotia. However the implementation of RJ is consistent with the approach offered by IIRP, as reflected in the training of facilitators. As discussed previously, the Jamaican government refused to engage in endogenous transfer by avoiding consultation with non-state stakeholders such as the dons and the Maroons. Dundas (consultant, Leicester cafe, 20/4/15) states,

“Nobody is documenting the 100 case studies that says this is what restorative conferences have looked like in Jamaica for the past 100 years, or a video study of the Maroons. Until

that happens, we will be negotiating with external agencies to fund models, which are translations of American or British or Canadian RJ, rather than through the indigenisation of how RJ works. And unless we really begin to indigenize RJ or acknowledge it as a deep community process, we will just be doing techniques until the cows come home”.

What was transferred?

The Jamaican government engaged in both hard and soft forms of policy transfer to develop the national RJ policy. There was hard transfer of tangible elements, as the policy copies parts of the Nova Scotia counterpart in terms of structure, content and administrative techniques.

Softer forms of transfer took place also. I have discussed the incorporation of two opposing ideologies on RJ by the Jamaican government; the one-size-fits all approach of IIRP and the context-specific approach advocated by the consultants. Some of the literature on RJ speaks to the importance of having an agreed understanding of RJ and its standards (Llewellyn & Howse, 1997; Braithwaite, 2001; Ashworth, 2002).

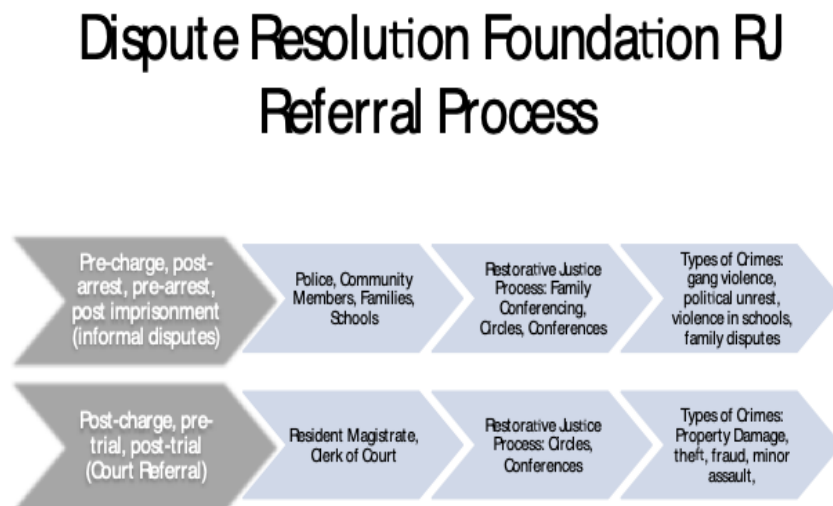
As Llewellyn stated in her interview (consultant, skype, 10/2/15) , it is essential for a jurisdiction to understand why it is engaging in RJ, as opposed to just thinking of it as another way of imposing punishment:

“For me, it depends on why parties are agreeing to it. If parties are agreeing to it because we assume that justice hasn’t really been done; unless there is some punishment meted out. One of the dangers of using these as practices to get to the same end point is that if you don’t actually change your thinking about justice is that the idea of justice is that we need to be able to meet the needs of the parties and establish better relationships for the future”.

Collaborative governance could have remedied this lack of consensus. Earlier I noted that the opposing nature of these ideologies resulted in a lack of consensus amongst stakeholders. However it also resulted in a variation in the implementation of RJ practices. The failure to streamline the efforts of DRF, the consultants and IIRP meant that different types of RJ were being practiced without the support of the state and outside of policy boundaries. I have mentioned the referral process of the national programme in Chapter 7 (Chart 8.1). However, the RJ process of

DRF is different in that it utilises a wider range of RJ processes, dependent on the type of crime being addressed. For instance, Hines (DRF director, DRF Offices, 07/11/14) indicated that DRF uses restorative circles at their own discretion. Also DRF uses RJ for a wider range of crimes including gang violence and sexual violence. This restricted use of RJ practices might affect the uptake of the programme and its success in resolving community disputes, since culturally, the Jamaican context lends itself to the use of circles and meets the demand of resolving a wider range of crimes

Chart 8.0 DRJ RJ Referral Process



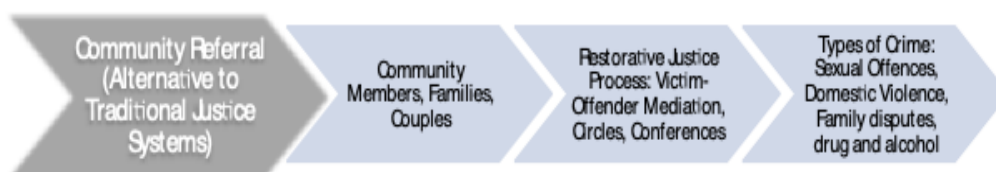
- Formally, Court referrals are made to DRF for mediation matters. However DRF uses their discretion in applying RJ processes if seen to be suitable and more beneficial.

Also, Northern Caribbean University (NCU), founded in 1907, participates in delivering restorative service through their Community Counselling and RJ Centre (CCRJC), in a way that is inconsistent with the national policy (<http://www.ncu.edu.jm/>, accessed on January 24, 2017). They use a RJ conferences and circles for a wide range of issues, namely gender-based violence. Also, they only provide RJ services at the pre-charge stage. (See Chart 8.1) In his interview, acting RJ

director, Hall,(RJU Offices, 28/11/14) affirmed this by noting that their approach to RJ was very different to that of MOJ, including their application of RJ to DV.

Chart 8.2 CCRJC Referral Process

Community Counselling and Restorative Justice Centre



- Formally, this organization is mentioned within the national RJ policy, but the Minister had no awareness of its existence.

When I asked Parchment-Brown (JRIU Lead, MOJ Offices, 30/2/15) if there was any concern regarding these distinctions, she indicated that it did not matter, as long as these other practices could be differentiated as being something other than RJ²²⁷. As long as RJ could be claimed by the state, there was no concern for how these other programmes might affect the state's programme, particularly since the public trusts DRF and PMI. However, as discussed, the presence of these programmes, which operate independently of the state by organisations that are more

²²⁷ My interviews indicated that upon leaving MOJ, Ruth Carey began to offer her own RJ services, which do not function as part of the state RJ programme.

trusted by the state are likely to have an effect on the uptake of the programme and the understanding of RJ generally.

What is the degree of transfer?

The literature on policy transfer indicates that a lack of political will is more likely to result in direct copying of policy. In the case of the Jamaican national RJ policy, a hybridisation/synthesis of elements from more than one jurisdiction took place. The practices and the policy in Jamaica are not exact copies of the practices and policies in Nova Scotia or Pennsylvania. However the similarities and changes made to the policy highlight the neglect of contextualisation and the opportunistic motivation to adopt international approaches, even in spite of advice from international consultants to do the opposite.

As discussed, some direct copying of the Nova Scotia policy took place. This had an impact on the reach of the RJ programme in Jamaica. For instance, both policies do not utilise RJ for sexual offences. Barrett (consultant, Skype, 10/01/15) noted that there was a current moratorium on the use of RJ for these crimes. However, she had recommended further research on its potential to address them in Jamaica, given the backlog of sexual violence cases. As discussed, this research was not done.

However, there are some differences between the Jamaican policy and its Nova Scotia counterpart. One such difference is that the Jamaican policy focuses on the punishment of adults only, whereas the Nova Scotia policy places particular emphasis on juvenile offences²²⁸. This initial focus on adult offences is inconsistent with best practice regarding implementation of RJ across

²²⁸ At the RJ International Conference, PS Palmer (MOJ Offices, 10/1/15) stated that the next phase of the RJ programme would be implementation in schools despite the fact that it has not yet been implemented into the justice system formally.

jurisdictions, where RJ is first applied to juvenile offences, where it is proven to have the most success²²⁹.

In addition, the Nova Scotia policy allows a range of agencies to be responsible for monitoring RJ agreements and other aspects of implementation. In Jamaica, the policy states that the RJ centre will undertake monitoring of agreements. The 2009 Community Security and Transformation Assessment Report states that CSJP failed to partner with local NGOs for the consistent delivery of services and had limited collaboration with other state-run agencies (GOJ, 2012). This distinction fails to take into account the lack of professional and financial resources available to run the programme in Jamaica. If the Jamaican government took the similar approach of collaborating with CSOs that are familiar with RJ already to implement and monitor RJ agreements, the initial results of the programme might have been more successful. Persons that were already familiar with DRF and PMI would have greater incentive to use the RJ programme. Also the courts could have piggybacked off the pre-existing agreement with DRF to conduct ADR for the courts by simply including RJ conferences in their mandate.

What factors constrain or enable policy transfer?

The policy transfer literature states that there are factors that either constrain or enable policy transfer. Hard forms of transfer tend to be plagued by constraining cognitive issues, such as public opinion as well as more tangible, environmental issues such as lack of resources (Benson & Jordan, 2011; Dolowitz & Marsh, 2000; Stone, 2004). In Jamaica, I suggest the constraining factors are social, cultural and economic in nature, ranging from practical issues such as literacy, to wider problems such as the nature of crime and public mistrust of the state.

²²⁹ Instead, Jamaica has developed a child diversion programme that works separately from the RJ programme.

Some of the more practical aspects of how RJ is being practiced hamper the efficiency of the process directly. I have discussed the failure to consider contextual issues such as literacy and its effect on the monitoring and evaluation of the RJ programme. This failure makes it difficult for MOJ to improve upon the initial implementation and satisfy the monitoring requirements of funders and thus maintain financial sustainability. Collaboration with civil society and more effective public consultations might have identified this issue prior to implementation.

Also, the state has not considered the differences in economic context between Nova Scotia and Jamaica. As part of a developed country that had a long-standing history of using RJ, Nova Scotia had access to funding, state support, a functioning justice system and a wealth of agencies to assist with implementation (Nova Scotia Justice, 2007, <https://novascotia.ca/just/rj/documents/Restorative%20Justice%20Protocol%20Eng%20Web.pdf>, accessed February 17, 2017). In Jamaica, economic instability has a direct effect on the sustainability of the RJ programme, which is run by way of external funding. During my interview with Parchment-Brown (JRIU Lead, MOJ Offices, 30/2/15), she noted that sustainability was her only concern about the RJ programme. Without charging for restorative services, there was no plan for how the programme would continue after the funding ends in 2019. As a result, the future of the programme is in jeopardy. Had there been a collaborative approach to governance, cost-effective measures might have been implemented such as service provision through civil society, the church academics and a range of professionals (including healthcare) to the RJ programme.

While RJ has the capacity to resolve a range of offences, its application was limited by the failure to consider the hesitation of political parties to address political violence and informerphobia. Damian Hutchinson of PMI (PMI Offices, 26/2/15) and Judith Wedderburn from FES (FES Offices, 10/10/14) discussed the difficulty of using RJ to address politically fuelled crime

because of the informerphobia culture. Hutchinson (PMI Director, PMI Offices, 26/2/15) stated that PMI embraces RJ principles of healing and restoration, but finds it difficult to utilise the practices because restorative conferences do not lend themselves to resolving issues between political gangs, because gang culture is such that persons are not inclined to be accountable or divulge the names of persons who are. Similarly, participants in both of my focus groups discussed their fear of implicating community gang leaders or an associate through participating in RJ. During my observations, the Tower Hill RJ centre was clearly identified as a RJ centre, which might deter persons from entering, from fear of being labelled as an ‘informer’. Also, I noted earlier that other persons were using the centre itself, which affected any possibility for anonymity. As a state-run entity, the RJ programme has suffered from informerphobia. During Barrett’s interview (consultant, Skype, 20/1/15), she recounted a story where a family member of a CSJP worker was killed because he was perceived as an informer. She stated that this perception of CSJP and the choice to partner with them affected the ‘politics’ surrounding the implementation of the RJ programme. In 2015, a RJ facilitator (also a JP) was killed as well (<http://jamaica-gleaner.com/article/news/20151118/justice-minister-condemns-killing-restorative-justice-facilitator>, accessed February 4, 2017).

The perception of trusted individuals such as dons, supporting the initiative might have allowed for increased public confidence of the RJ programme. However, I have discussed PS Palmer and the refusal of the Jamaican government to work with dons, against the advice of international consultants. Also, the 2009 Community Security and Transformation Assessment Report states that CSJP neglected to make attempts to improve police-community relations, which would have been an important step in improving public trust.

I have discussed the failure of the Jamaican government to consider public opinion. Public attitudes of justice constrain the types of policy that can be transferred. In Jamaica, the predominant approach to justice is categorised by severe and blanket punishment. PS Palmer (MOJ Offices,

10/1/15) and Justice McIntosh (DPP Offices, 28/11/14) stated that that public consensus indicated that RJ, as a soft approach to crime, should only be applied to minor community disputes. CEO of FES, Wedderburn (FES Offices, 10/10/14) as well as PS Palmer (MOJ Offices, 10/1/15) and Puisne Judge Justice McIntosh (DPP ,Offices, 28/11/14) echoed similar sentiments, stating that some CSOs felt that RJ would be inappropriate for more serious crimes such as sexual violence. Indeed the national consultations indicated that people were not comfortable with the use of RJ for more severe crimes. While the majority (77.9%) of respondents felt that persons should always have the opportunity to explain their actions, 57.2% felt that the community was not better than the government in resolving crime. 52.9% felt that community leaders would be best suited to resolve family disputes.

However there is some research to indicate that the public is open to RJ for serious crimes. In particular evidence indicates that persons are open to RJ in conjunction for sexual violence at the post-sentence phase. I have discussed the work of Taylor, Chauhan & Fondacaro (2012), which indicates that people are open to a mixture of restoration and retribution. In my own questionnaire I asked how participants thought sexual offences should be punished. 109 of 202 participants felt that RJ should not be used for more serious sexual offences (as identified in Chapter 5). However, when asked how individual crimes should be punished, many persons opted for a mixture of incarceration and rehabilitation or rehabilitation only. Participants felt that rape (61%) and (54%) grievous sexual abuse was best addressed through a mixture of rehabilitation and incarceration. Also over 40% of respondents opted for rehabilitation only in the case of incest and marital rape. Rev. Dundas (consultant, cafe leicester, 20/4/15) highlighted the success of restorative-oriented programmes that he ran during his post as Chaplain for the correctional facilities. During my interview with George from Standup Jamaica (director, Standup for Jamaica offices, 20/1/15), he stated that many incarcerated offenders (including sex offenders) were eager to participate in RJ. If the Jamaican

government had sought to use public opinion to determine how RJ should look in Jamaica, policymakers might have considered RJ to be applied to a wider range of crimes at various stages throughout the justice process, thereby increasing access to justice.

What was the Impact on Policy Transfer?

The national RJ policy in Jamaica stands as an example of inappropriate policy transfer. The lack of collaborative governance, lack of political and the opportunistic motivation for policy transfer led to a neglect of political, economic and social context that would have created a national RJ policy that addressed the needs of Jamaicans. This *inappropriate* policy transfer led to the poor implementation efforts discussed, such as the varied approach to practice within and across administrations, poor infrastructure, lack of sustainability, the neglect of practical restraints such as poverty, safety and literacy within the practice itself, discrepancy between policy and practice and poor monitoring of the programme. Also, there have been limited results. Inconsistent reports on how many conferences have been conducted demonstrate the poor implementation. While Parchment-Brown (JRIU Lead, MOJ Offices, 30/2/15) reported that over 80 cases had been conducted, the official report indicates that only 46 cases have been undertaken. This is particularly low considering the relatively large populations of the identified pilot communities (See Appendix Seven).

The fact that none of these cases have been completed speaks to the efficiency of the programme as well, particularly since these cases take place at the community dispute level, where they are unburdened by the lack of involvement of the court system and its backlog. Also, there is limited awareness of the programme. The 2009 Community Security and Transformation Assessment Report, an assessment of CSJP found that only 44% of persons living in CSJP communities were aware of their presence (GOJ, 2009).

Conclusion

This thesis examines the development and implementation of the national RJ policy in Jamaica. In particular I sought to identify what the policymaking process as well as the factors that influenced that process and determine how these factors affect the capacity of RJ. Other justice policies implemented in Jamaica have failed to prevent crime within a Jamaican context, but appease international interests and Jamaica's need for financial support. Jamaica is a post-colonial society that has a history of government using policy as a political tool to gain favour and funding from developed states and the wider international community. However, in the case of justice policy there has been a hesitation to implement effective policy as a result of the government's own involvement in crime. Jamaica has become a pluralist society, where there are multiple informal justice systems that operate alongside the state, in response to its failure to provide effective justice to its citizens.

In this thesis I suggest that, unlike other justice policies implemented in Jamaica, RJ policy has the potential to provide an effective approach to justice within a local context, while being consistent with best practice as dictated by the international community. RJ is a HR respecting approach to crime that seeks to address the harm caused to the victim and the community by holding the wrongdoer accountable in a way and placing emphasis on the healing of all affected by the crime to ensure that they are better off than before the crime took place.

RJ has the capacity to respond to a number of justice related issues in Jamaica. First, it provides an avenue to justice in response to the current lack of effective justice available to Jamaicans, particularly those from the majority classes, due to discussed issues of backlog and ineffective legislation. Second, it is a system that is rooted in respect for HR. This is in contrast to Jamaican justice systems that violate the rights of both wrongdoer and victim. Where punishment is

imposed by the formal system, it often violates the rights of the wrongdoer by imposing severe punishment that is unrelated to the crime, thereby limiting his capacity for reform and putting the public at greater risk of his reoffending. Third, as an adaptable approach to justice it has demonstrated effectiveness in a range of jurisdictions, for a number of crimes. This effectiveness of RJ could inspire public confidence in the justice system as a whole addressing crime, thereby reducing the need for informal systems that offer victims justice, but in a way that violates the rights of the wrongdoer, and often ties the victim to conditions of reciprocity. However I suggest that RJ can only be effective when it is implemented as a community driven approach with the state playing a supportive role. In addition, I emphasise the importance of collaborative governance in policymaking so that the policy itself can reflect the needs of the society in which it is being implemented.

Consistent with the Dolowitz and Marsh framework literature I note that it is important that policymakers do the following in order to be successful in policy transfer: (i) accommodates the involvement of a wide range of stakeholders, (ii) have a genuine un-coerced desire to reconcile an issue problem, (iii) identify what needs to be transferred in order to address the issue within the local jurisdiction, (iv) engage in a broad search to find the solution to the problem being addressed, with a particular view to examine jurisdictions with similar problems and context, (v) adapt policy to suit the context of the local jurisdiction, (vi) consider contextual, demand and programmatic constraints throughout the transfer process, (vii) be informed about the donor and recipient countries as well as the policy being transferred.

However the Jamaican government engaged in opportunistic policy transfer. That is, the state implemented RJ with the desire to maintain funding relationships with Canada and be consistent with international best practice, as opposed to reducing crime, despite encouragement from donors to contextualise policy. This insincere motivation resulted in an emphasis on

collaboration with international stakeholders, while limiting the involvement of other stakeholders who had a vested interest in developing effective justice or could provide insight to the Jamaican context. Also, the state failed to consider a wide range of similar jurisdictions from which to borrow policy, but instead borrowed from the province of Nova Scotia of Canada; a leading country in implementing RJ. Thus, the Jamaican government engaged in inappropriate policy transfer, where they failed to sufficiently inform themselves as to the social, cultural and economic differences between Nova Scotia and its own jurisdictions as well as the various constraints of adopting policy from a developed to a developing context including public mistrust of the state, lack of resources and the presence of informal justice systems that operate alongside the state.

I attribute this failure to consider context sufficiently to a lack of collaborative governance. In borrowing from the literature on collaborative governance, I suggest that collaborative governance is a key process of policymaking. That is, in order to develop effective policy, it is essential that: (i) a range of stakeholders are engaged in key decision making processes, particularly non-state actors, (ii) there is consensus amongst all decision makers regarding the aims and their roles in achieving those aims, (iii) a presence of strong administrative capacity and leadership and, (iv) on-going, clear communication. In Jamaica the failure of both political parties to collaborate with each other demonstrated a lack of strong leadership and administrative capacity by the state, which was hampered further by the jungle justice system. By failing to collaborate with each other, there was a lack of consistency and consensus in the approach to developing the RJ programme. Ultimately the lack of motivation to implement effective justice policy and competitiveness for ownership of the policy as a means of gaining favour with international funders, limited the capacity for collaboration with civil society and excluded other stakeholders such as dons and the public; all of whom would have helped to address the context-specific issues to contend with in Jamaica. In this way collaborative governance contributed to inappropriate policy transfer. As a

result the RJ programme has demonstrated limited efficiency and has been received poorly, as evidenced by the limited uptake.

I have noted that this thesis makes a number of contributions to the literature and practical application of justice policy transfer. In particular, I note the contributions to the discussion of penal policy transfer in Jamaica and other developing countries that have to contend with certain issues that are absent within a developed context. By embracing a case study approach that utilises the Dolowitz & Marsh framework, this thesis also highlights an example of the mistakes that can be made in policy transfer and offers suggestions as to how they might be avoided. In particular, I have added to the framework itself by introducing the concept of opportunistic policy transfer and its potential to lead to inappropriate policy transfer. I have indicated that opportunistic policy transfer is poorly motivated for effecting change through policy and thus, is usually accompanied by limited search for policy that meets the needs of the political, economic and social context of the recipient jurisdiction. In addition, there is no coercion, direct or implied from the donor country. As a result, opportunistic policy transfer is most likely to lead to inappropriate policy transfer.

This discussion is particularly important for other countries that might learn from an examination of this justice policymaking exercise. Some of these lessons include the need for developing states to: (i) collaborate with a range of stakeholders, particularly those non-state stakeholders who are most affected by or involved with crime and can contribute to the development of a programme that meets the realities of the local context, (ii) investigate local forms of justice and justice systems that operate successfully in similar jurisdictions, (iii) focus on finding sustainable approaches to implementation, (iv) emphasise the value of monitoring and evaluation efforts as a means of identifying and reconciling problems that affect policy effectiveness, (v) ensure all stakeholders share a consensus on the aims of the policy as well as their roles in achieving those aims. This consensus should be rooted in factual information about the recipient

jurisdiction, such as the underlying causes of crime and local factors that prevent the administration of justice.

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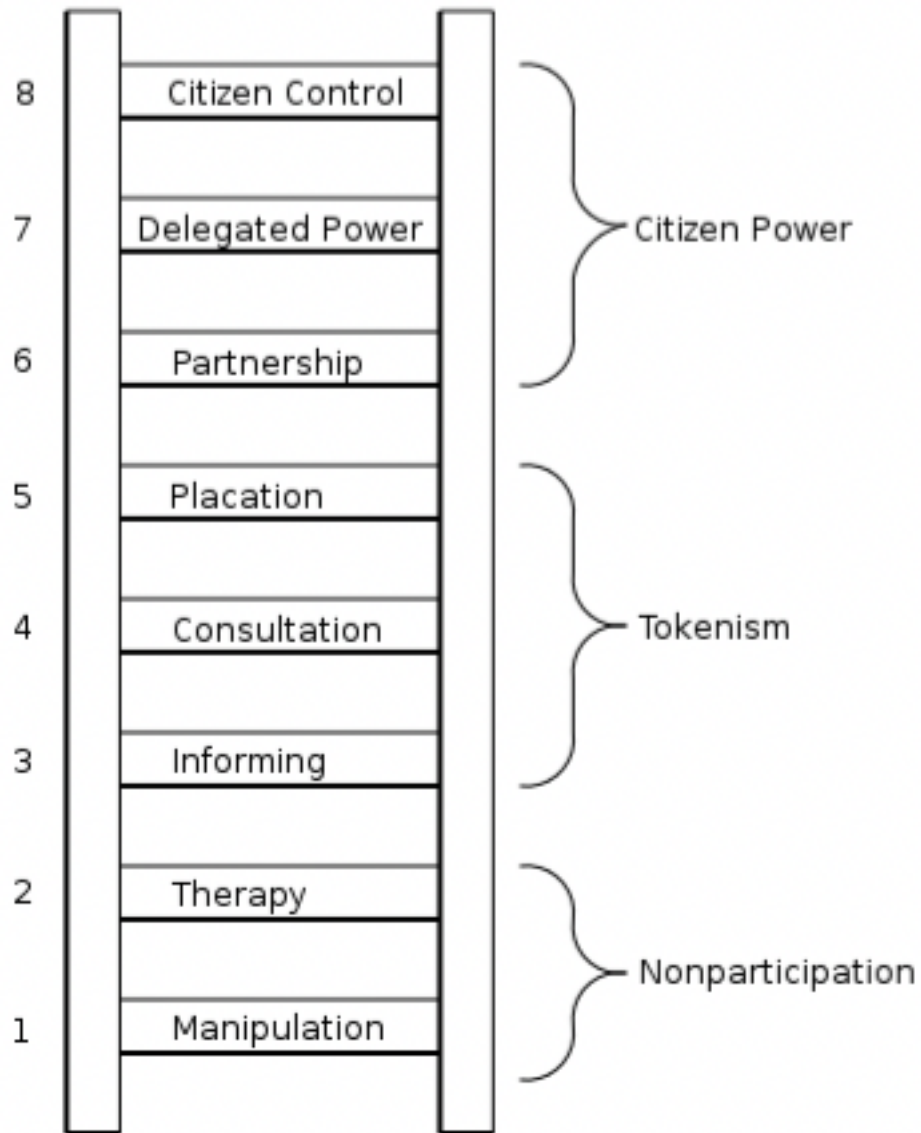
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Appendix One: Collaboration

Arnstein's Ladder of Participation



Moloney's Continuum of Collaboration

Informing —> Consultation —> Placation —> Cooperation —> Coordination —> Collaboration

Appendix Two: Methodology Tools

Interview Request Sample

Leanne Levers
University of Warwick,
Coventry CV4 7AL,
United Kingdom

November 3, 2014

Permanent Secretary,
Ministry of Justice,
South NCB Head Tower,
2 Oxford Road,
Kingston 5, Jamaica

Attention: Mrs. Carol Palmer, Permanent Secretary

Dear Permanent Secretary:

My name is Leanne Levers I am a PhD Candidate at the University of Warwick in England. Currently, I am conducting research for my thesis in Jamaica, which focuses on the use of restorative practices in Jamaica.

As part of my research, I am conducting interviews with various persons who have participated in the development of RJ in Jamaica. I am hoping that you would participate in this research as an interviewee. At your convenience, I would be most appreciative of the opportunity to speak with you about your role as Permanent Secretary and your involvement in RJ

I sincerely hope that you will consider my request. I may be contacted at 406- 9194 or email me at: L.A.Levers@warwick.ac.uk.

Sincerely,



Leanne Levers

PhD Candidate, University of Warwick

Online Questionnaire

RJ and Sexual Violence

Before you answer the questions, please watch this video. This video has two parts. The first section aims to provide you with factual information about sex offenders/sexual offences. The second section is a dramatization of a restorative conference that is handling a sexual assault. In this questionnaire, we will ask your opinions about how we define sexual offences and how sexual offences should be handled. In addition, we will be asking about your knowledge and opinions about a certain type of RJ and its potential use for certain crimes. Please answer all questions to the best of your ability. Thank you for participating in this research.

Before you answer the questions, please watch this video:



1. What is your gender?

- Male
- Female

2. What is your age?

- 18- 24

- 25-34
- 35-44
- 45 and over

3. Employment Status

- Self-Employed
- Employed
- Homemaker
- Retired
- Unable to work
- Student
- Military

4. Have you ever been arrested or incarcerated?

- Arrested
- Incarcerated

None of the Above

5. What does the word ‘justice’ mean to you?

6. How would you rate the following crimes in terms of severity (1 Least Severe-5 Most severe)?

- Marital Rape – non consensual intercourse with a spouse
- Incest – sexual relationship between family members
- Grievous Sexual Assault –oral/anal intercourse with object other than a penis
- Rape –Vaginal Penetration with a penis
- Child Sexual Abuse –Any sexual contact with a child performed by an adult

7. What kind of punishment should sex offenders receive?

- Marital Rape
 - Death Penalty
 - Rehabilitation
 - Chemical Castration
 - Life Imprisonment
 - Incarceration and Rehabilitation
- Incest
 - Death Penalty
 - Rehabilitation
 - Chemical Castration
 - Life imprisonment
 - Incarceration and Rehabilitation
- Rape
 - Death Penalty
 - Rehabilitation
 - Chemical Castration
 - Life imprisonment
 - Incarceration and Rehabilitation
- Grievous Sexual Assault
 - Death Penalty
 - Rehabilitation
 - Chemical Castration
 - Life imprisonment
 - Incarceration and Rehabilitation

- Child Sexual Abuse
- Death Penalty
- Rehabilitation
- Chemical Castration
- Life Imprisonment
- Incarceration and Rehabilitation

8. Do you think sex offenders should be allowed to return to the community after being punished?

- Yes
- No

9. Before watching the video were you are of RJ?

- Yes
- No

10. Have you ever participated in a restorative process? If yes, which?

- A. Sentencing Circle
- B. Restorative Conference
- C. Family Conference
- D. Peacemaking Circle
- E. None

11. Would you opt to participate in restorative process?

- A. Offender
- B. Victim
- C. Community Member
- D. I would not participate

12. Do you think RJ, as shown in the video would help victims get closure?

- Yes
- No

13. What reasons would victims have for not participating in restorative justice?

- Fear
- Expense
- Time
- Non interested
- Anger
- Other _____

14. Do you believe that any types of sex offenders can give genuine apology?

- Marital Rapists
- Rapists
- Incest
- Child Molester
- Grievous Sexual Assault

15. Do you think that the type of RJ shown in the video could be used to punish less serious sexual offences?

- Yes
- No
- Maybe

16. Do you think the type of RJ shown in the video could be used to punish more serious sexual offences?

- Yes
- No

- Maybe

17. Do you think Jamaicans would participate as community members?

- Yes
- No
- Maybe

18. What are the reasons that Jamaican community members would possibly refuse to participate in RJ, as shown in the video?

- Fear
- Expense
- Time
- Not Interested
- Other

19. If you were to participate in the type of conference shown in the video what measures would you want in place? _____

Appendix Three: Document Analysis

List of Documents

- 2008-2009 Final MOJ Annual Report
- 2009 CSJP Quality and Risk Review: Results and Procedures Report
- 2010 Amnesty International Jamaica Submission to the UN Universal Periodic Review
- 2012-2013 Jamaica National Crime Victimization Survey Final Report (Ministry of National Security, 2013)
- 2013 Economic and Social Survey (Planning Institute of Jamaica, 2014)
- 2013 UK Home Office Report on Jamaica
- 2014 Auditor General's Department Performance Audit Report of the Management of department of Correctional Services' Rehabilitation Activities and Reintegration of Offenders into Society
- 2014 CSJP Project Profile
- 3 research papers prepared by international consultants for the RJ programme
- Assessment of Community Security and Transformation Programmes in Jamaica (GOJ, 2009)
- Assessment of the Civil Society in Jamaica (James, 2014)
- Code of Consultation of Practice for the Public Sector (GOJ, 2005)
- DFID Business Case for Citizen Security and Justice Programme Phase 3 (2014)

- Final Evaluation Report: Jamaica Violence Prevention, Peace and Sustainable Development Programme (UNDP, 2011)
- Final Jamaica Justice System Reform Policy Agenda (Darby, 2009)
- IADB CSJP Programme III Loan Proposal and Nonreimbursable Technical Cooperation (2014)
- Jamaica Request for an Extended Arrangement under the Extended Fund Facility (IMF, 2013)
- JLP and PNP Manifestos 2007-2011
- National Crime Prevention and Community Safety Strategy (NCPCSS) (Ministry of National Security, 2010)
- National RJ policy of Jamaica (Government of Jamaica, 2012)

Appendix Four: Garrison Information

List of Garrisons and their Political Affiliation

List of Kingston Garrisons	Political Affiliation
Cassia Park	JLP
Trench Town	PNP
Cockburn Pen	PNP & JLP
Waterhouse	PNP
Riverton City	PNP
Payneland	JLP
McKoy Lane	PNP
Tivoli Gardens	JLP
Brownsland	JLP
Rose Town	PNP
Denham Town	JLP
Wilton Gardens	JLP
Olympic Gardens	JLP
Dunkirk	JLP
August Town	JLP
Nannyville	PNP
Rae Town	PNP
Arnett Gardens	PNP
Hannah Town	PNP
Vineyard Town	PNP
Allman Town	PNP
McGregor Gully	PNP
Mountain View	JLP
Backbush	JLP
Papine	PNP
Jaques Road	JLP
Rockfort	PNP

List of Kingston Garrisons	Political Affiliation
Jarrett Lane	PNP
Tel Aviv	PNP
Bull Bay	PNP & JLP

Appendix Five: Timelines

Timeline of Milestone Events regarding RJ in Jamaica

1976:

- Introduction of pre-trial process for family disputes (discontinued)

1980:

- IMF agreements focused on economic development

1990-4:**

- DRF Founded (1994)
- Peace and Love in Schools (PALS) receives mediation training from the Peace Education Foundation
- Dispute Resolution Foundation (DRF) receives training in mediation and dispute resolution from Capital Law School
- Court referrals to DRF
- Establishment of Drug Courts¹
- Use of Commission of Enquiries (highly politicized)

1995

- Introduction of Night Courts to reduce court backlog; resolve minor matters (discontinued in practice due to safety issues in downtown)

1998

- Mediation units in Police force (never established formally) Police officers receive mediation training from DRF.

1999-2000

- DRF Conducted VORP training and advanced communication skills with Professor Howard Zehr
- DRF attends Eastern Mennonite University for training in RJ
- DRF attempts to introduce RJ to government.
- DRF conduct RJ sensitization for correctional centres in Kingston o Development of Batterer's Programme (discontinued)
- Temporary release programmes for inmates (not used widely)

2001

- West Kingston shootout between Renalto Adams and Tivoli Gardens garrison (27-30 civilians killed, 2 police officers wounded)
- Separation of Ministry of National Security and Justice into 2 separate entities
- West Kingston Commission of Enquiry receives recommendation from Jennifer Llewellyn to consider incorporation of RJ into system.
- Citizen Security Justice Programme (CSJP) founded (Government Agency; Phase 1 intended to develop nation strategy, capacity building within ministries, improve justice system)

2002

- CSJP 1 funding granted (20.6 million- IMF budget, World Bank, IADB; provided RJ funding for Asst with policy, PR materials and delivery of Crime survey)
- Development of RJ programme in Prison through Harvard students (discontinued)
- Peace Management Initiative (PMI) founded (parastatal)
- PNP won general election. 3rd consecutive win
- Policy Framework Research Paper by Llewellyn
- Victim Support Unit founded (Government Agency)

2003

- Social Conflict and Legal Reform Project founded
- UNDP funds position of consultant for RJ initiative.

2004

- Hurricane Ivan (relocation of some CSJP funds)

2005

- People's National Party coordinates RJ Study tour (main attendees, DRF, PMI & Ministry of Justice (MOJ))
- Training of Justices of the Peace as mediators by DRF
- Justice Reform Act passed
- RJ Consultations conducted by DRF (not mentioned in policy documents)

2006

- Government decision started coordinating RJ through MOJ to respond to 2002 recommendations of the inquiry
- Llewellyn asked to come on board as a consultant to write the policy. She recommends using a local person who would understand the Jamaican context Llewellyn and associates asked to come on board as consultants
- Citizen Security Initiative founded (government agency). Members trained by DRF
- Justice Task form Formed
- Portia Simpson-Miller becomes head of PNP and Prime Minister due to resignation of Prime Minister P.J Patterson

2006-2010**

- RJ agenda surrounding Public Relations, Building Awareness via Conferences, radio adverts, sensitization sessions
- Bid for training won by IIRP
- Permanent Secretary becomes member of IIRP board
- Request by Ministry of Justice to extend payment of CSJP funding to due to failure to complete objective

2007

- Justice System Task Force: Reform Framework Agenda produced. Proposes RJ as an philosophy to underpin reform of the justice system
- RJ Paper produced by Rev. Leon Dundas (Head of Chaplaincy Unit, Member of DRF)
- Dispute Resolution Foundation continues Consultations and Sensitizations for RJ around the country
- Justice Undertakings for Social Transformation founded (government agency under Ministry of Justice; 18.5CA million, CIDA, exp. 2016)
- Jamaica Labour Party (JLP) wins national election after 18 year reign of PNP; Bruce Golding become Prime Minister
- Dorothy Lightbourne become head of Ministry of Justice and Attorney General
- Joint Select Committee formed for reform of 2003 Sexual Offences Act o Hurricane Dean (redirections of funds)

2008

- Strategic Framework developed for Policy development by Llewellyn & Graham

- Jamaica Violence Peace and Sustainable Development Programme founded (government programme)
- Consultations conducted by DRF

2009

- Ruth Carey hired as 'Project Specialist' under Ministry of Justice o Permanent Secretary of Ministry of Justice Carol Palmer resigns
- Rainford (JLP) replaces Carol Palmer as Permanent Secretary
- First Assessment of Justice Reform Projects by CIDA/UNDP
- CSJP Phase 2 begins (IDB, UK government; DFID funded increased emphasis on RJ related objectives; IDB funding received; RJ programme framework, case management system, national policy, training/sensitization; RJ centres)
- IIRP conducts training of 59 RJ facilitators (mostly Justices of the Peace)

2010

- Extradition of donman Christopher 'Dudus' Coke
- Audrey Barrett (student of Llewellyn) is hired as National Technical Advisor (no description/ mandate given for position)
- JVSPD ended
- First RJ centres built (4)
- Further training from IIRP
- Child Diversion Programme developed (considered to be driven by RJ principles)

2011

- West Kingston Commission of Enquiry following extradition (ongoing)
- Lightbourne implicated in Dudus case; asked to resign and ousted from the party by Prime Minister Golding
- Delroy Chuck becomes Minister of Justice
- Ruth Carey become head of RJ Unit; writes and completes national RJ policy with Audrey Barrett
- Bruce Golding resigns as Prime Minister due to being implicated in Dudus case
- Andre Holness becomes JLP leader and Prime Minister
- Some training delivered to MOJ facilitators by Audrey Barrett o Continued training by IIRP

2012

- JLP loses election and Portia Simpson-Miller becomes Prime Minister under PNP
- More RJ centres built
- Continued trained by IIRP
- Carol Palmer returns to position of Permanent Secretary of Ministry of Justice
- Publication of National RJ Policy o Sensitization of RJ continued

2013

- Estimated sensitization of 5000 citizens in 10 pilot communities by CSJP
- Child Diversion Initiative implemented (slated to end in 2016)
- 40 RJ Facilitators trained with child rights and responsibility skills
- Development of National Child Diversion Policy (not yet completed) o 6 Consultations held for Child Diversion Policy
- Donna Parchment Brown (former head of DRF & PMI, Custos of St Andrew) becomes head of Justice Reform Implementation Unit for JUST programme (MOJ project)

2014

- RJ conferences begin to be held within pilot communities (80 conducted, 20 completed)
- Ruth Carey contract as head of RJU ends; she starts an independent RJ consultancy firm
- Roydon Hall (Olympic Gardens RJ centre manager) becomes acting director of RJU
- Announcement that RJ policy is being tabled for legislation (not done) o Hiring process for new RJU director begins
- Tender for training plan for Ministry of Justice under the JUST Programme

2015

- CSJP Phase 3 begins (Exp 2019) (55 million; IDB, DFID, DFATD; 12 million dedicated to RJ development; increasing range of RJ programmes, evaluation of RJ programmes; at end of CSJP 2- 46 cases conducted)
- Ministry of National Security forms a new working group to work on crime fighting policies (<http://rjnewsonline.com/local/working-group-established-to-formulate-crime-fighting-policies>)
- Opposition Leader uses buggery law to win votes; putting it to referendum (http://www.jamaicaobserver.com/news/Holness--JLP-Gov-t-will-put-buggery-law-to-referendum_19235602)

- New RJU director hired (4th director since programme started)

Appendix Six: Photographs

Pictures of Tower Hill RJ centre in Jamaica Signage for Tower Hill RJ Centre



Wall of RJ Community Centre



RJ centre functions as a local community centre

Pre-meeting taking place outside of the RJ centre



Appendix Seven: Populations

Population of RJ Pilot Communities

Pilot Community	Population (estimated)
Granville	4,435
Effort Ville	3,876
Homestead	5,756
Tower Hill	11,926
Canaan Heights	3,816
March Pen	3,827
Ellerslie	4,723
Montego Bay	110,115
Russia	6,956
Trench Town	6,122
August Town	5,958